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U.S. FOREIGN POLICY'S ROLE IN HOMELAND SECURITY: THE EGYPTIAN CASE

by

Jonathan T. Berardinelli

December 2011

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LIST OF ACRONYMS AND ABBREVIATIONS

CAT   Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or punishment

CFR   Code of Federal Regulations

CIA   Central Intelligence Agency

DOJ   Department of Justice

FDI   Foreign Direct Investment

GDP   Gross Domestic Product

NSS   National Security Strategy

OPEC   Organization of Petroleum Exporting Countries

PDD   Presidential Decision Directive

PL   Public Law

UN   United Nations

US   United States

USAID   United States Agency for International Development

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I.   INTRODUCTION

A.   MAJOR RESEARCH QUESTION

This thesis examines the role of United States (U.S.) foreign policy in Egypt after Hosni Mubarak took office in 1981. Egypt's autocracy provided international stability by supporting a peace with Israel and allowing the United States access to the Suez Canal and airspace permitting transit to the Arabian Peninsula. However, it also stifled Islamic opposition groups such as the Muslim Brotherhood and militants have cited its policies as motivation for terrorist attacks. U.S. foreign policy supporting autocratic rulers of Arab states impacts homeland security because these rulers' marginalization of Islamic political parties can foster extremism, increase the threat of terrorism to the U.S., and lead to catastrophic political instability that results in a takeover of the country by a regime that supports hostility towards the United States. The research will identify how U.S. policy in Egypt affected reform towards a democratic state before Mubarak's resignation in the spring of 2011.   The thesis examines U.S. foreign aid and security policy in relation to Egyptian democratic reform and human rights records.   Additionally, it explores political Islam and its relevance to U.S. foreign policy.

B.   IMPORTANCE

1.   The U.S.'s Role in the Middle East

The objective of U.S. policy in the Middle East over the past half-century has been to maintain stability in order to ensure access to the region's oil and the containment of rival powers. Despite America's promotion of democracy, especially after the fall of the Soviet Union, it has routinely supported un-democratic Middle Eastern regimes in pursuit of national interests. U.S. support for these regime types has been one of the rationales for terrorist groups to increase attacks against America and its interests

beginning in the 1990s.[1] The end of the Cold War, coupled with the Egyptian demonstration of the peoples' power to reform, presents a potential point of departure from backing regimes that do not support democratic principles for the United States. Opponents of such actions argue that the U.S. cannot afford to risk instability in the region that fuels the world economy and that a gradual approach that does not challenge the status quo must ensue in order to maintain stability along the path to democracy in the Middle East.

2.   The Middle East's Role in the U.S.

The Middle East is the most important geographical region of the world today. The U.S. is dependent on its natural resources, partnership in combating terrorism, and cooperation in garnering peace in the Arab-Israeli conflict. Each of these factors contributes to the security threat that instability in the Middle East presents to the U.S.

The U.S. economy is dependent on the flow of Middle Eastern oil. Business' fabrication of products and their transportation to market rely on the Middle East's contribution to the energy market and the Organization of Petroleum Exporting Countries (OPEC) price regulations. The impact of a reduction in oil supply or price hikes could cause serious damage to both the U.S. and global economies and impact homeland security by restricting the U.S.'s ability to provide for its (and others') defense.

The U.S. military and the nation's security are dependent on Middle East oil. Without the region's supply of this natural resource the global reach and day-to-day operations of the various branches of the U.S. military would grind to a halt. Therefore, it is in the U.S. national interest to support stability in the Middle East in order to enable military operations that support Homeland Security and Defense such as counter-terrorism actions abroad and Operation Noble Eagle flights at home.

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[1] Osama bin Laden, "Speech to the American People," in Richard K. Betts, ed., *Conflict After the Cold War: Arguments on Causes of War and Peace* (New York: Pearson Education, Inc., 2008), 541. Michael Scheuer, *Imperial Hubris: Why the West is Losing the War on Terror* (Washington, DC: Brassey's, Inc., 2004), xviii.

However, recent U.S. stability measures have resulted in U.S. support for UN-democratic regimes such as Egypt, Libya, and Saudi Arabia and have caused dissent in some groups that subscribe to terrorist tactics.

The dichotomy between the U.S. desire for democracy in the Middle East and the maintenance of the region's stability presents a problem for policy makers. Policies that support the status quo—stability provided by the current regime regardless of the level of oppression—may manifest instability in fringe extremist groups and lead to increased terrorism against the U.S. On the other hand, accepting higher levels of political participation in states may result in more sustainable stability that does not rely on coercion in the long run, even though it may provide extremist groups a voice in politics. The tension between these two approaches to foreign policy presents one of the most pressing decision points for policy makers today. Optimally, U.S. policy in the Middle East should foster reform that encourages democratic principles while discouraging and discrediting terrorism.

One major factor contributing to Middle East instability is the Arab-Israeli conflict. While there is consensus that this dispute must be solved prior to peace reigning in the Middle East, it does not represent an immediate threat to U.S. security when compared to aforementioned concerns. This topic deserves further research but is beyond the scope of this thesis.

C.   PROBLEMS AND HYPOTHESES

This thesis examines the conditions under which the United States worked with the Mubarak regime and this arrangement's impact on U.S. homeland security. Major turning points in the country's modern history occurred with the Camp David Accords, the end of the Cold War, and, most recently, the Arab Spring. Despite changing international conditions, Egypt's government has not experienced a transition away from the authoritarian status quo or a change in U.S. policy towards the state. Lessons from the past three decades in Egypt are important factors that U.S. policymakers must consider when weighing foreign policy options with other Arab authoritarian regimes. Analysis of how U.S. foreign policy either encouraged or inhibited reform in Egypt may

provide the key to dismantling the glut of authoritarianism in other Arab countries and improving U.S. homeland security by fostering stability and accountability in these states. The research should identify U.S. policy options that promote stability without compromising democratic principles by examining the historical record. By determining how policies affect democratic reform and interact with political Islam, the U.S. may improve homeland security by encouraging more transparent societies and eliminating the breeding grounds produced by the marginalization of groups that resort to extremism and carry out terrorist attacks.

1. Egyptian Stability

The recent events in Egypt unveiled the region's ability to enact political change from below. Hosni Mubarak's resignation occurred despite the U.S. alliance with his regime and defied the odds of a successful popular movement against a military dictatorship. Historically, the U.S. has discounted the Arab people's desire and capability to stand up to autocratic regimes in some Middle East countries and has shied away from supporting popular movements. Egypt has entered into a new phase of instability due to the fall of its autocracy and this presents threats to U.S. interests in the Suez Canal and counter-terrorism efforts.

The U.S. relies on stability in the Middle East to maintain economic, military, and political interests in order to ensure homeland security. This stability ensures access to the region's natural resources, provides the U.S. the ability to deter adversaries such as Iran or Al Qaeda, and reduces the need to intervene in the fragile Arab-Israeli conflict. Middle East instability constitutes an existential threat to multiple nations in the region and has the potential to produce catastrophic effects on U.S. security as a result of economic malaise and the threat of terrorism.

The historical U.S. modus operandi was to maintain stability by providing support for friendly regimes that hold power, regardless of the nature of governance. Such policy involved the requirement to support regimes that did not champion the U.S. concepts of liberty, such as Mubarak's autocratic government. In lieu of a policy that entails

supporting autocratic or dictatorial regimes, the alternative method to foster stability requires significant social, economic, and political reform to occur in Middle East states.

2. Challenging the Status Quo

Attempts by foreign countries to enact reform on sovereign states from without have met with limited success. Previous to the Arab Spring, reform in the Middle East was stifled by the autocratic policies of most regimes that were abetted by the U.S.'s compliance with these regimes' policies. The Egyptian uprising of 2011 provides an alternative to the status quo.

U.S. foreign policy spans a wide spectrum of bureaucratic governance that leaves room for the existence of counterproductive initiatives. It is critical that academics and policymakers take the time to recognize when policy counteracts strategy in order to achieve democratic objectives in the future. At a time when many scholars and politicians describe America's position in the world as declining, research must analyze if foreign policy helped hasten these beliefs.

The hypothesis of this thesis is that U.S. support for the Mubarak regime and the policy of extraordinary rendition delegitimized the U.S. democratic message, quelled Egyptian reform efforts, and ostracized political Islam. As a result, U.S. homeland security has suffered due to Egyptian discontent with the autocratic regime and its U.S. patron state. The United States must refocus its foreign policy on long term stability by ensuring its actions adhere to democratic ideals and helping liberalize political participation in order to delegitimize radical groups.

D. LITERATURE REVIEW

1. Egyptian Authoritarianism

The current literature on Egypt under Mubarak describes a political system retreating from democracy. The economic reform strategy Mubarak used prior to 1990 and the multiparty political system was inherited from Sadat.[2] Additionally, Mubarak

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[2] Maye Kassem, Egyptian *Politics: The Dynamics of Authoritarian Rule* (Boulder, CO: Lynne Rienner Publishers, 2004), 26.

prioritized economic reform over democratic advances because he believed a reversal of prioritization would lead to instability.[3] This leads to an ongoing debate in Arab democratic reform that revolves around the two camps that cannot agree on whether economic liberalization is required prior to democratization taking place.[4]

According to Maye Kassem, democratization in Egypt eroded after 1990 when elections began to result in fewer opposition groups winning parliamentary seats and the executive dominated legislative actions.[5] The regime upheld the law on the state of emergency, posing barriers to a free press, freedom of expression, and freedom of assembly. Additionally, this measure gave authorization for the president to try civilians in military courts, undermining the judiciary and providing the ability to stifle opposition.[6]

Egypt under Mubarak experienced a significant expansion in civil society and nongovernmental organizations; however, these gains did not reverse the retreat from democracy. The lack of a "balance of power" in government and the executive's lack of respect for civil rights undermined superficial democratic overtures such as multiparty elections, which were manipulated by Mubarak's party.[7] The Economist Intelligence Unit ranked Egypt's level of democracy at 138th in the world for 2010 and illustrated a continuing decline with a democracy index that decayed from 3.89 to 3.07 between 2008 and 2010.[8]

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[3] Ibid., 27.

[4] Kenneth M. Pollack, *A Path Out of the Desert* (New York: Random House, 2008), 254, 279. Steven A. Cook, "The Right Way to Promote Arab Reform," *Foreign Affairs* Vol. 84, No. 2 (Mar/Apr 2005), 93-94. Crispin Hawes, "Change in the Middle East: Why Governance Counts," *Organisation for Economic Cooperation and Development, The OECD Observer* (May 2005), 34. Amr Elshobaki and Gema Martin Munoz, *Why Europe must engage with political Islam* (Condé-sur-Noireau, France: EU Institute for Security Studies and European Institute of the Mediterranean, 2010), 27, 33. Hilton L. Root, Yan Li, and Kanishka Balasuriya, "The U.S. foreign aid policy to the Middle East," in Robert E. Looney, ed., *Handbook of U.S.-Middle East Relations: Formative Factors and Regional Perspectives* (New York: Routledge, 2009), 49.

[5] Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule*, 29-30.

[6] Ibid., 37.

[7] Ibid., 186.

[8] Economist Intelligence Unit, "Democracy Index 2010: Democracy in Retreat," *The Economist*, 2010, www.eiu.com/democracy (accessed May 22, 2011), 13.

Historians attribute the centralization of power in Arab countries to the legacy of colonialism, the struggle to evict imperialism, a dependency on the military apparatus, and poor economic development.[9] The decolonization period produced the Arab nation-state and, in the case of Egypt, a small group of individuals called the Free Officers were ultimately responsible for the country's independence. The leader of the movement, Gamal Nasser, took on the role of Egypt's savior and utilized "protectionist and distributive socio-economic models" to fulfill a patriarchal role for the citizenry.[10] This model was very effective during the age of pan-Arab nationalism and anti-imperialism in the 1960s. According to Gema Martin Munoz, the bifurcation of the value systems of civil society and the leadership in the 1970s, especially under the stress of the Arab-Israeli wars and economic turmoil, caused the Egyptian regime to favor coercion over social programs to maintain power.[11]

According to Robert Springborg, "Postcolonial Arab governments have been weak because they are essentially unconnected to the societies over which they preside."[12] This exacerbates the stress of economic turmoil and leads to further coercive measures on the regime's part. Egypt's military apparatus experienced a resurgence under Mubarak after Sadat's reduction in its preeminence.[13] Mubarak also relied on the Central Security Force, which carried out the majority of his coercive policies.[14] Research must examine the relation between U.S. policy and Egypt's development of its coercive apparatus.

Literature pre-dating the Arab Spring outlined different assessments of authoritarianism's grip in the Arab world. Scholars such as John Entelis and Kenneth Pollack have stated that authoritarianism is not close to ending in Arab countries and that

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[9] Stephen Zunes, "Democracy and Human Rights: The Limits of U.S. Support," *Global Dialogue* Vol. 8 (Summer 2006), 23.

[10] Elshobaki and Munoz, *Why Europe must engage with political Islam*, 22.

[11] Ibid.

[12] Robert Springborg, "State-Society Relations in Egypt: The Debate over Owner-Tenant Relations," *Middle East Journal*, Vol. 45, No. 2 (Spring 1991), 232.

[13] Robert Springborg, "The President and the Field Marshal: Civil-Military Relations in Egypt Today," *MERIP Middle East Report*, No. 147, (Jul-Aug 1987), 5.

[14] Ibid., 7.

the Middle East "cannot stabilize itself and if left to its own devices will wreak havoc on the United States and the rest of the world."[15] According to Daniel Brumberg, Egypt's attempts to liberalize institutions have been a feint to help avoid democratization and strengthen the autocracy.[16] Springborg goes further to hypothesize that Egypt has been an enemy of capitalism and open governance as illustrated by its commitment to maintaining rentier policies.[17] Egypt's failure to develop a strong middle class after Sadat's open economic policies was a result of the fact that the requisite condition that economic growth must outpace population growth for the bourgeoisie to flourish did not occur.[18] Additionally, in order to counter its weakness relative to society the state intentionally limited middle class development, empowered those classes that supported the regime, and attempted to keep all societal components fragmented to limit the power of opposition movements.[19] Analysis of the U.S.'s role in supporting the perpetuation of Egyptian authoritarianism must provide further insight on its historical staying power.

Pollack explains the concept of "Arab exceptionalism" by pointing out that the U.S.'s failure to consider other nation's interests in policymaking leads to a lack of U.S. effort "to promote democracy" and hinders the region's political advance. Despite the country's poor track record on democratization in the late 20th and early 21st centuries, Egypt was second only to Israel as a beneficiary of U.S. assistance, a fact that portrayed the U.S. as a supporter of the Mubarak regime.[20] During this period the regime attempted to restrict foreign democracy promotion by opposing "foreign support to independent civic groups."[21]

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[15] John P. Entelis, "The Democratic Imperative vs. the Authoritarian Impulse: The Maghreb State between Transition and Terrorism," *Strategic Insights* 4 (Jun 2005), 14.

[16] Daniel Brumberg, *Democratization Versus Liberalization in the Arab World: Dilemmas and Challenges for U.S. Foreign Policy* (Carlisle, PA: U.S. Army War College, 2005), 1.

[17] Robert Springborg, "Agrarian Bourgeoisie, Semiproletarians, and the Egyptian State: Lessions for Liberalization," *International Journal of Middle East Studies* Vol. 22, No. 4 (Nov 1990), 447.

[18] Ibid., 448.

[19] Ibid., 467.

[20] Jeremy M. Sharp, "Egypt in Transition," Congressional Research Service Report for Congress, RL33003 Washington, DC, 4 May 2011, 5.

[21] Ibid., 6.

2. U.S. Relations with Egypt

U.S. foreign policy in Egypt illustrates tension that has attracted scholarly debate. U.S. administrations have cooperated with unaccountable autocrats like Mubarak in order to suppress Islamic opposition without facing the obstacles presented by democratic society. However, scholars point out that such measures can foster extremism by forcing groups to operate outside the rule of law.[22] Observers have debated over the utility of partnerships with autocratic rulers versus democratic reform when attempting to create stability in the Arab world. The former forces opposition underground while the latter may result in radical groups taking over government.[23]

Up until the Arab Spring of 2011, the U.S. had embraced a policy of supporting friendly autocratic regimes such as Egypt while berating hostile ones.[24] Realist observers describe U.S. actions as being in line with protecting energy supplies and homeland security.[25] However, critics highlight the vulnerability of these regimes and the threat to American interests if an anti-U.S. group successfully overthrows the ruler of a major oil exporter or a country that controls trade routes such as the Suez Canal. One indicator of current U.S. policy is the leadership's choice not to recognize certain election results in Arab states attempting democratic reform if they are counter to U.S. interests.[26]

Some scholars have claimed that there is an "alliance curse" that is defined by a "perverse relationship between U.S. assistance and autocratic control."[27] Foreign assistance allows leaders to resolve internal conflicts through coercion (without fear of sanctions) or small-scale liberalization measures.[28] Interventionists discount the alliance curse and contend that the U.S. must have a foothold in Arab states to enable any hope of

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[22] Zunes, "Democracy and Human Rights: The Limits of U.S. Support," 29.

[23] Ibid. John L. Esposito, "Its' the Policy Stupid: Political Islam and U.S. Foreign Policy," *Harvard International Review*, May 2, 2007, http://hir.harvard.edu/its-the-policy-stupid (accessed Nov 28 , 2011).

[24] Zunes, 22. Cook, "The Right Way to Promote Arab Reform," 31.

[25] Root, "The U.S. foreign aid policy to the Middle East," 45.

[26] Elshobaki and Munoz, *Why Europe must engage with political Islam*, 26.

[27] Root, 38.

[28] Ibid.

reform.[29] A third perspective favors a lesser role for the U.S. and the adoption of a multinational effort to democratize Arab states.[30] Those observers that call for a smaller U.S. role in democracy promotion point out that the Middle East has grown wary of the selective U.S. policy for supporting democracy.[31]

3. Egypt and Democratic Reform

Strategies for fostering democracy in the Middle East take varying positions on economic and political prescriptions. Many observers favor increased financial aid to the Middle East in order to encourage economic liberalization and a gradual shift to democracy.[32] Increased aid on a conditional basis may provide the best opportunity for stability and can expand "economic power beyond the autocratic center" through the incorporation of free trade and capital markets.[33] The level of corruption inherent in Arab governments hinders the effects of economic aid and liberalization in autocratic regimes and de-emphasizes the need for social and political development.[34] Currently, the Obama administration, along with the other members of the G8, is providing economic assistance to "post-autocratic Arab countries that have toppled heads of state and moved towards democracy."[35]

Another source of tension in the debate over democratization in Arab countries is the role of political Islam. Many Americans believe this is the greatest threat to both the Middle East and the world.[36] However, the opposing camp believes not only that

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[29] Entelis, "The Democratic Imperative vs. the Authoritarian Impulse: The Maghreb State between Transition and Terrorism," 14.

[30] Rashid Khalidi, *Resurrecting Empire: Western Footprints and America's Perilous Path in the Middle East*, (Boston, MA: Beacon Press, 2005), 172.

[31] Elshobaki and Munoz, *Why Europe must engage with political Islam*, 26.

[32] Pollack, *A Path Out of the Desert*, 254, 279. Cook, "The Right Way to Promote Arab Reform," 4.

[33] Hawes, "Change in the Middle East: Why Governance Counts," 1. Cook, 4. Elshobaki and Munoz, 27, 33. Root, 49.

[34] Cook, 2. Elshobaki and Munoz, 27, 33. Root, 49.

[35] "G8 commits $20bn to 'Arab Spring'," *Aljazeera*, May 27, 2011, http://english.aljazeera.net/news/europe/2011/05/201152784050139238.html (accessed 27 May 2011).

[36] Elshobaki and Munoz, 25. Brumberg, *Democratization Versus Liberalization in the Arab World: Dilemmas and Challenges for U.S. Foreign Policy*, 13. Pollack, 283.

political Islam is crucial to democratic reform but also that not including it creates an extremist threat to America.[37] Scholars refrain from portraying political Islam as an equal contributor to instability in the Middle East compared to poverty, lack of human rights, and unemployment.[38] Additionally, some claim that political Islam is better as an involved, accountable entity rather than an external power.[39] The Muslim Brotherhood, "Egypt's oldest and largest Islamist organization," has played a significant role in the overthrow of Mubarak's regime and brings the topic of political Islam to the forefront of any discussion of democratization in the country.[40]

E.   METHODS AND SOURCES

This thesis uses a historical comparison of the political and security policies of the Egyptian and U.S. governments since Mubarak took office by examining scholarly articles and books. Research on current developments will use the aforementioned resources along with Congressional Research Service reports, reputable journalistic sources, and media reports to examine recent events. Comparative analysis of political and security measures taken by the Mubarak regime, along with U.S. foreign policy initiatives in Egypt, between the period of 1981–2011 will constitute the scope of the thesis.

F.   THESIS OVERVIEW

This thesis consists of five chapters. Chapter I has reviewed the current literature on reform and U.S. policy in the Middle East. Chapter II examines the role U.S. foreign aid has played in Egyptian democratic reform. Chapter III analyzes how the U.S. policy of extraordinary rendition to Egypt compares to the democratic principle of the rule of law. Chapter IV evaluates how U.S. policy interacts with political Islam. Lastly, Chapter

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[37] Elshobaki and Munoz, *Why Europe must engage with political Islam,* 6. Zunes, "Democracy and Human Rights: The Limits of U.S. Support," 22.

[38] Amnesty International, "Amnesty International Report 2011: State of Human Rights in the Middle East and North Africa, January to Mid-April 2011," Amnesty International, April 2011, www.amnesty.org/en/library/info/POL10/012/2011/en (accessed May 22, 2011), 5.

[39] Elshobaki and Munoz, 8.

[40] "Profile: Egypt's Muslim Brotherhood," *BBC News*, Feb 9, 2011, http://www.bbc.co.uk/news/world-middle-east-12313405 (accessed May 27, 2011).

V compares U.S. policy with policymakers' desire for democratic reform and provides suggestions for adjusting foreign policy in Egypt in order to improve homeland security.

Scholars will be correct to characterize the scope of this thesis as reductionist. There are many topics involved in international relations and, for each of these variables, there are multiple angles from which researchers can approach them. This thesis intentionally limits the examination to two types of U.S. foreign policy with the intent to illustrate their impact on homeland security. Due to the limited nature of the research's scope, the objective of this compilation is to provide an input to the debate over foreign policy versus attempting to provide the answer to the deliberation.

II. U.S. FOREIGN AID AND EGYPTIAN DOMESTIC POLICY

A. INTRODUCTION

The United States established itself as a leader in foreign aid when it implemented the Marshall Plan at the end of World War II. Since then, American rhetoric toward developing nations has touted democratization and the development of capitalist systems while using food, economic, and military aid programs to bolster relationships. Egypt became the second highest recipient of U.S. aid after Anwar Sadat signed the Camp David Accords and established peace with Israel. Given Egypt's recent ouster of Hosni Mubarak after 30 years in power it is prudent to examine the effects of U.S. policy during his reign. Specifically: Did U.S. policy support the perpetuation of the regime or the transition to democracy in Egypt during the past three decades?[41]

The trajectory of U.S. policy in Egypt is critical to the democratic message of the United States. If American leaders promote democracy while supporting authoritarian leaders their inconsonant actions delegitimize the democratic philosophy. The perpetuation of repressive regimes that limit freedoms undermines long-term stability and creates a continuous succession of economic and political stumbling blocks in the path of successful democratic reform.

The United States has used foreign aid to Egypt as a means to secure its own interests. The dichotomy between the U.S. desire for stability, along with financial markets, and its promotion of democracy has produced contradictory messages in the Middle East. Of significant import, U.S. support for the Egyptian autocracy through foreign aid programs has tarnished the image of democracy. The fact that Mubarak resigned one day after U.S. president Barack Obama called for him to step down illustrates the influence of U.S. pressure in Egypt. Although a plethora of factors could have contributed to this event, the impact of the U.S. president's words illustrates U.S. foreign policy's sway in Egypt's domestic politics. The U.S. has possessed clout with

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[41] It is possible to argue that the regime and democratization were not diametrically opposed. This research attempts to show that, although his regime did implement some reform measures, Mubarak did not support democracy.

Egypt's leaders since the 1970s and its failure to effectively use leverage via aid may have created political and economic ramifications that fomented the rise of groups in opposition to the regime and the United States.

This chapter analyzes the relationship between U.S. foreign aid and Egyptian domestic policy. In order to do this, it is divided into sections that build off of one another. The topics cover the purpose of foreign aid, types of foreign aid, and U.S. aid to Egypt relative to reform efforts. Each section introduces the relevant literature on the subject and compares U.S. foreign aid strategy to prevailing thought. Ultimately, the chapter attempts to illustrate how the United States' focus on short-term goals and U.S. interests in Egypt has reduced the long-term security of the United States.

B.   WHY GIVE FOREIGN AID?

Hans Morgenthau describes two different perspectives on foreign aid: first, that it is an obligation of the rich nations and, in opposition to that position, that there is no reason for it at all.[42] In contrast to the claim of the latter, foreign aid can increase the donor state's power. Denis Sullivan supports this perspective by pointing out that politics play a key role in aid, which can be used to pursue realist policies since it provides a leveraging tool for achieving national interests.[43]

Two camps exist regarding the purpose of foreign policy. Liberal internationalists promote the concept of democratic values first while realists champion the cause of the national interest.[44] Political realism views foreign aid as a means to increase national power (for example, through alliances). On the other hand, liberal internationalists promote foreign aid as a means to enhance another country's development.[45] The two theories overlap when a recipient nation becomes a source of power for a donor (i.e.

[42] Hans Morgenthau, "A Political Theory of Foreign Aid," *The American Political Science Review* Vol. 56, No. 2 (Jun 1962), 301.

[43] Denis J. Sullivan, "The Failure of Foreign Aid: An Examination of Causes and a Call for Reform," *Global Governanace* Vol. 2, No. 3 (Sep-Dec 1996), 408.

[44] Jeremy M. Sharp, "U.S. Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY2011 Request," Congressional Research Service Report for Congress, RL32260 Washington, DC, 15 June 2010, 15.

[45] Tomohisa Hattori, "Reconceptualizing Foreign Aid," *Review of International Political Economy* Vol. 8, No. 4 (Winger 2001), 643.

through new economic markets or alliances) as a result of its development. Based on this intersection, foreign aid is ultimately a mechanism for advancing political interests.

Modernization theory and liberal internationalist thought converge since the latter proposes that aid helps underdeveloped countries achieve an accelerated rate of advancement that they could not garner on their own.[46] On the other hand, foreign aid may work to the advantage of the donor by providing new markets or the capability to manipulate their own markets by gifting surpluses.[47] Chirot goes so far as to argue that the market for surplus via foreign aid in imperial relationships can be reciprocal. That is, imperial powers *aid* colonies by absorbing their surplus—in a free market of coequal states where aid is not being given comparative advantage drives similar effects on surpluses.[48] World system theory puts a negative light on this relationship by asserting that foreign aid and the push for economic development and free trade create the opportunity for stronger nations to increase their monopoly over developing nations due to their more competitive economies.[49] Regardless of the angle from which one views foreign aid, nations that give aid can use their position to benefit economically in addition to politically.

1.   Realism and U.S. Foreign Aid 1954–1991

U.S. foreign aid to Egypt has historically been provided in pursuit of the national interest. During the Cold War the United States strove to gain influence in Egypt as a hedge against the Soviet Union. The Food for Peace program (P.L. 480) provided surplus U.S. wheat to Egypt and helped manage excess supply. According to the Congressional Research Service, "Offers of additional economic aid failed to convince Egypt to abandon a parallel relationship with the Soviet Union."[50] The U.S. failure to

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[46] Daniel Chirot and Thomas D. Hall, "World-System Theory," *Annual Review of Sociology* Vol. 8 (1982), 83.

[47] Peter Uvin, "Regime, Surplus, and Self-Interest: The international Politics of Food Aid," *International Studies Quarterly* Vol. 36, No. 3 (Sep 1992), 297.

[48] Chirot and Hall, 83.

[49] Ibid., 84.

[50] Sharp, "U.S. Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY2011 Request," 22.

achieve its national interest of creating a closer relationship with Egypt was punctuated when Egypt severed ties with the U.S. during its war with Israel in 1967.[51] Leading up to this, the United States had begun reducing aid due to Egypt's increasing recalcitrance.

During the 1960s, Congress raised concerns over Egypt's' lack of acquiescence to U.S. demands despite the aid it received.[52] Nasser's military action in North Yemen, a number of hostile actions against American interests in Egypt, and the regime's refusal to acknowledge the role of P.L. 480 in its domestic politics drove the Johnson Administration to withhold food aid in late 1964 and early 1965.[53] Egypt countered the U.S. pressure by rejecting any aid and, therefore, rejecting the relationship when Nasser told the U.S. ambassador, "We have been patient with all of the pressure you have applied to us with your aid program, but our patience has run out."[54] This would be the last time the United States attempted to withhold aid in order to produce desired results. Despite its early failure to further national interests via foreign aid to Egypt under Nasser, the United States would resume efforts after Sadat took power.

Anwar Sadat turned to the United States when he became saddled with war debt after 1973. The United States seized this opportunity to reassert its cold war courtship of Egypt and advance its objective of supporting an Israeli-Arab peace. America granted economic aid for Egypt's disengagement with Israel in the Sinai Peninsula in 1975 followed by yearly stipends of $1.3 billion after Egypt signed the Camp David Accords. Prior to and throughout Mubarak's rule the United States implemented an aid structure for Egypt based on its need to maintain stability in a region that included its ally Israel, access to natural resources, and potential financial markets.

According to U.S. Agency for International Development (USAID), foreign aid to Egypt is intended to "promote peace and regional stability, counter extremism and

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[51] Sharp, "U.S. Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY2011 Request," 22.

[52] Jean-Jacques Dethier and Kathy Funk, "The Language of Food: PL480 in Egypt," *MERIP Middle East Report*, No.145, The Struggle for Food (Mar-Apr 1987), 23.

[53] Ibid., 24.

[54] Ibid.

terrorism, and create an environment conducive to economic reforms."[55]   The 2010 National Security Strategy (NSS) states, "The United States supports the expansion of democracy and human rights abroad because governments that respect these values are more just, peaceful and legitimate."[56] According to these statements, USAID prioritizes stability over reform while the NSS clearly elucidates that stability is the primary objective, preferably via democracy and human rights.   The realist approach of U.S. foreign aid to Egypt has roots prior to Mubarak. According to Henry Kissinger, the most significant shift in U.S. foreign policy away from the liberal internationalist Wilsonian ideology and towards a realist agenda occurred during the Nixon administration. Nixon "perceived the world as composed of ambiguous challenges, of nations impelled by interest rather than goodwill, and of incremental rather than final changes."[57] As a result, foreign policy focused on stability or "staying power as much as to salvation."[58] Through his successful engagement with the Soviet Union and China, Nixon set the course for a realist of foreign aid dominated by realist thought.

2.   Realism and U.S. Foreign Aid 1991–2011

U.S. aid to Egypt focused on maintaining American power in the region and has remained steady at close to $2 billion annually since 1979.[59] During Mubarak's regime this aid was augmented multiple times in order to further U.S. interests. In 1991, the United States cancelled $6.7 billion in Egyptian military debt in return for Mubarak's aid in the Gulf War, specifically for his help in courting an Arab coalition that was critical for U.S. legitimacy when opposing Iraq.[60]   After the events of September 11, 2001 (9/11), the United States provided an additional $100 million in aid to Egypt in order to

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[55] U.S. Agency for International Development, *Audit of USAID/Egypt's Democracy and Governance Activities*, Office of Inspector General, Audit Report No. 6-263-10-001-P, October 27, 2009, 1.

[56] Barack Obama, *National Security Strategy* (Washington, DC: Government Printing Press, 2010), 37.

[57] Henry Kissinger, *Diplomacy* (New York: Simon and Schuster Paperbacks, 1994), 742.

[58] Ibid., 742.

[59] Sharp, "U.S. Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY2011 Request," 8.

[60] Ibid., 24.

help counter the economic impact of the attacks. Furthermore, as Egypt took on a more significant role in the war on terror (one element of which Chapter III will cover) the United States helped raise a multilateral aid package of $10 billion for the nation in February 2003.[61] When research juxtaposes the resilience of U.S. aid efforts to Egypt against the regime's lack of reform on human rights matters as well as democracy, it illustrates that U.S. foreign aid objectives prioritized national interests above Egyptian development. Prior to examining Egyptian reform efforts it is crucial to analyze the types of foreign aid the United States provided Egypt over the past 30 years.

C.   TYPES OF FOREIGN AID

Examining the types of aid a nation provides may divulge the political interest of the donor state. Foreign aid consists of humanitarian, subsistence, military, and prestige aid, along with bribery and aid for economic development. According to Morgenthau, humanitarian aid is the only type of aid that is nonpolitical.[62] Subsistence aid provides an artificial foundation for "nonviable regimes" to prevail despite the existence of a "political alternative."[63] Historically, this type of aid goes to these regimes because the donor has an economic or military interest in the region.[64] Military aid has typically served to increase a nation's power through alliances. In the Twentieth Century, this type of aid has included prestige aid, where a nation's stature is elevated based on its receipt of state of the art equipment. Additionally, military aid may act as a bribe to nations by leveraging physical security for specific political action (or inaction).[65]

Morgenthau defines bribery as the exchange of money and services for political service. Leaders may disguise this concept with the moniker of "foreign aid for economic development" which requires the façade of an economic development

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[61] Maye Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule* (Boulder, CO: Lynne Rienner Publishers, Inc., 2004), 179.

[62] Morgenthau, "A Political Theory of Foreign Aid," 301.

[63] Ibid., 302.

[64] Vandana Shiva, "Geopolitics of Food: America's Use of Food as a Weapon," *Economic and Political Weekly* Vol. 23, No. 18 (Apr 30, 1988), 881.

[65] Morgenthau, 303.

"machinery" that creates inefficiencies when compared to a traditional bribe.[66] The duplicitous nature of this type of foreign aid is likely to leave both sides disappointed due to the lack of clear expectations.[67] Another characteristic associated with foreign aid for economic development is the stipulation that the majority of the funds are spent in the donor's economy.[68] While aid may overtly make recipients dependent on the patron, sociologists describe another, less obvious, outcome of these programs.

1.   Social Hierarchies

Tomohisa Hattori, an assistant professor of political science at Lehman College, construes foreign aid as means to dominate others by creating palatable social hierarchies.[69] As a result, the gift of aid creates a dominant giver and a grateful recipient.[70] Hattori cites sociologist Pierre Bourdieu in pointing out that there are "only two ways of getting and keeping a lasting hold over someone: gifts or debt."[71] According to the giver-receiver hierarchy, the interest of the giver should prevail since the receiver must show gratitude. Hattori claims that this system of relations embodies the Kantian view of international relations since it creates an option to avoid "the more standard recourse to violence or coercive means."[72] In simple terms, Hattori's characterization describes a neo-colonial structure where imperial powers influence colonies through gifts instead of occupation. This is hardly a peaceful arrangement based on the third world's historical fight against imperialism and the failure to address the fact that inequality may lead to conflict.

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[66] Morgenthau, "A Political Theory of Foreign Aid," 302.

[67] Morgenthau, 303.

[68] 80 percent of aid to Egypt is spent on U.S. goods and services. Sullivan, "The Failure of Foreign Aid: An Examination of Causes and a Call for Reform," 411.

[69] Hattori, "Reconceptualizing Foreign Aid," 639.

[70] Ibid., 640.

[71] Ibid.

[72] Ibid., 649.

2.   Inequality and Instability

Literature on the relationship between inequality and conflict is mainly limited to the scope of intrastate violence. According to Alberto Alesina and Roberto Perotti, "Income inequality increases socio-political instability."[73] Edward Muller and Mitchell Seligson support this interpretation of inequality's role in conflict and expand on it to show that semi-repressive regimes increase the potential for violence.[74] Frances Stewart's concept of horizontal inequalities, or inequalities between groups versus economic classes, provides a concept that can be applied to the international realm.[75] According to her research, "The significance of any measure of inequality from a conflict-creation perspective is increased if it occurs systematically over a number of dimensions and grows over time."[76] Therefore, counter to Hattori's claim that social hierarchies create platitudes when states give aid the perpetuation of such relationships, in lieu of creating more equal relationships, may provide the foundation for conflict.

Although the rationality of states may prevent the manifestation of such violence, sub-state groups could be galvanized in response to the interstate relationship. Christopher Cramer concludes that, although "a relatively peaceable durable inequality" may exist, "sharp changes in the nature of the relationship between groups; external interventions; ideological shifts whereby injustices that were previously accepted come to be regarded as grounds for conflict, violent or nonviolent; and new possibilities of equality" may provide the impulse towards struggle.[77]

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[73] Alberto Alesina and Roberto Perotti, "Income Distribution, Political Instability, and Investment," National Bureau of Economic Research Working Paper No. 4486, October 1993, http://www.nber.org/papers/w4486 (accessed Oct 8, 2011), 18.

[74] Edward N. Muller and Mitchell A. Seligson, "Inequality and Insurgency," *The American Political Science Review* Vol. 81, No. 2 (Jun 1987), 437, 445.

[75] Stewart gives examples of groups as the executive, military, and law enforcement. In the international arena groups would represent nations. According to Stewart, horizontal inequality is a far greater harbinger of conflict than vertical inequality (usually represented by the GINI coefficient). Frances Stewart, "Crisis Prevention: Tackling Horizontal Inequalities," *Oxford Development Studies* Vol. 28, No. 3 (200), 256. Further analysis is required to support the concept that horizontal inequalities between nations results in conflict although anecdotal historical evidence supports the claim.

[76] Stewart, 256.

[77] Christopher Cramer, "Does Inequality Cause Conflict?" *Journal of International Devleopment* Vol. 15 (2003), 409.

3. U.S. Foreign Aid to Egypt

In light of these revelations, Hattori's argument that gifts "naturalize" relations is misleading for two reasons: first, it assumes that recipient states are content with their dependencies on aid; second, it does not account for conditions demanded by the donor.[78] Egypt has acted counter to Hattori's theory despite being the second largest recipient of U.S. aid. The United States and Egypt signed the "Glide Path Agreement" in the late 1990s that resulted in a 69 percent decrease in economic support funds to Egypt.[79] According to the Congressional Research Service, Egypt desires to "graduate from U.S. bilateral economic assistance" in part due to its "reluctance to accept conditions for U.S. aid" which indicates that aid has failed to naturalize the relationship.[80] Hattori's model failed in this case because U.S. economic aid to Egypt included conditions and, therefore, was not a gift; instead, it was a bribe according to Morgenthau's definition. Furthermore, the presence of conditions begets the observation that U.S. aid to Egypt is undertaken with the U.S. national interest in mind. Research must determine whether the entirety of U.S. aid to Egypt focused on the nation's transition to a democracy that respects human rights or other motivations.

D. EGYPTIAN REFORM RELATIVE TO U.S. AID

1. Foreign Aid as an Incentive for Reform

When donors desire reform in a recipient nation then aid can act as an incentive.[81] Such policies may either make the availability of aid dependent on conditions or attempt to "alter the preferences and perceptions of the recipient."[82] When donors provide aid to

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[78] Hattori, "Reconceptualizing Foreign Aid," 642.

[79] Sharp, "U.S. Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY2011 Request," 4.

[80] Military aid is the largest amount of U.S. aid to Egypt and it does not include conditions that require democratic reform. Ibid., 5. Mary Beth Sheridan, "Egypt Warns U.S. on Attaching Conditions to Military Aid," *The Washington Post*, Sep 29, 2011, http://www.washingtonpost.com/world/national-security/egypt-warn (accessed Oct 23, 2011).

[81] Zsolt Becsi and Sajal Lahiri, "Bilateral War in a Multilateral World: Carrots and Sticks for Conflict Resolution," *Canadian Journal of* Economics Vol. 40, No. 4 (Nov 2007), 1185.

[82] Dorussen, "Mixing Carrots with Sticks: Evaluating the Effectiveness of Positive Incentives," *Journal of Peace Research* Vol. 38, No. 2 (2001), 261.

repressive regimes conditions are required if there is to be a positive effect on the social situation.[83]   Food aid is an example of subsistence aid that can be used as an incentive. In addition to being a "carrot," food aid also has the potential to significantly alter a nation's economy.

According to Shiva, "The United States has used food control as a strategic objective as much as military."[84]   Peter Uvin goes on to support this notion by observing that "part of all food aid is still given for economically or politically self-interested purposes, particularly by the United States."[85]   There is a consensus that food aid presents more drawbacks than political and/or economic benefits.[86] Some opine that food aid acts as an "overt attack on the survival of third world farmers and third world producers" due developed countries' ability to charge lower prices.[87] This is exacerbated by the encouragement to transition to crops that favor large landowners and create a dependency on imports.[88] As a result, food trade liberalization, especially coupled with exposure to high producers' low cost and infusions of food aid, degrades agricultural sectors in countries that open the market to international trade when they lack comparative advantage.[89]

American food aid to Egypt became a means of U.S. support for the Mubarak regime. The Food for Peace program led to many Egyptian farmers being unable to compete with the low prices of imports and created a national dependency on imported food.[90] The erosion of the agricultural trade surplus in 1970 to a three billion dollar

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[83] Filip Palda, "Can Repressive Regimes be Moderated Through Foreign Aid?" *Public Choice* Vol. 77 (1993) 547.

[84] Shiva, "Geopolitics of Food: America's Use of Food as a Weapon," 882.

[85] Uvin, "Regime, Surplus, and Self-Interest: The international Politics of Food Aid," 308.

[86] Ibid., 300.

[87] Shiva, 882.

[88] Ray Bush, "Politics, Power and Poverty: Twenty Years of Agricultural Reform and Market Liberalisation," *Third World Quarterly* Vol. 28, No. 8 (2007), 1600.

[89] Shiva, 882.

[90] Anne Alexander, "Mubarak in the International Arena," in Rabab El-Mahdi and Philip Marfleet, eds., *Egypt: The Moment of Change* (London, UK: Zed Books Ltd, 2009)*,* 139.

deficit in the 1980s illustrates this shift in Egypt.[91]   According to Egyptian economist Galal Amin, "The weak performance of agriculture and industry can be partly explained by the state relaxing its role in those two sectors, an essential part of the model not only encouraged by virtually demanded by Washington."[92]   The transition to agricultural areas of comparative advantage in the international market favored large landholders due to the "preoccupation with capital intensive export agriculture."[93]   As Egypt's dependence on imports such as wheat continued the regime, in turn, became dependent on both the food and economic aid the United States provided.   According to Dethier and Funk, "U.S. food aid [was] a prop for Egypt's urban food pricing system, without which the Egyptian government would be in big trouble."[94]   The Mubarak regime's exploitation of cheap food prices by using aid and providing subsidies maintained a minimal level of legitimacy for the government.[95]   U.S. food aid provided a source of leverage that no U.S. president chose to use in order to further democracy or human rights in Egypt.[96]   As a result, observers of U.S. foreign aid in Egypt could contend that it supported the Mubarak regime.

2.   The Egyptian Status Quo

The United States chose to ignore the lack of political reform in Egypt due to its overriding national interest in maintaining peace with Israel and access to natural resources.   One glaring example of Egypt's failure to move toward improving human rights is the perpetuation of emergency rule since 1981.   According to Maye Kassem, this law, which must be renewed every three years, "provides the government with the legal right to control every level of political activity."[97]   Emergency rule denies citizens the

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[91] Bush, "Politics, Power and Poverty: Twenty Years of Agricultural Reform and Market Liberalisation," 1603.

[92] Galal Amin, *Egypt in the Era of Hosni Mubarak: 1981-2011* (Cairo, Egypt: The American University in Cairo Press, 2011), 168.

[93] Bush, 1609, 1612.

[94] Dethier and Funk, "The Language of Food: PL480 in Egypt," 26.

[95] Ibid.

[96] The Glide Path Agreement did not include food aid.

[97] Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule*, 55.

right to judicial review and makes them vulnerable to arbitrary arrest. One example of the latter is the regime's apprehension of 54 leaders in the Muslim Brotherhood prior to the 1995 elections.[98] Despite this overt disregard for the rule of law and human rights, the United States never placed democratic conditions on its foreign aid to Egypt.[99] This position betrays the U.S. desire for stability via the Mubarak regime over the promotion of democracy and human rights in Egypt.

3. Foreign Aid as an Engine for Reform

Donors do not have to use aid as a leveraging tool to foster reform. Aid or foreign direct investment (FDI) may produce economic growth (increasing gross domestic product [GDP] per capita) and/or human development (increasing human capital accompanied by economic growth), which can contribute to reform.[100] Kosack and Tobin claim that FDI is the "largest and most stable source of external finance for developing countries" and has a better capability to improve human development due to its larger pool of resources and "its freedom from the disruptive interference of government."[101] Their research shows that the recipients of aid benefit most when aid focuses on human development and FDI is directed toward both human development and economic growth.[102] Additionally, the amount of human capital present affects the benefits of aid and FDI. High levels of pre-existing human capital creates a virtuous

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[98] Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule*, 38.

[99] Other examples of either a lack of reform or backward reform abounded during Mubarak's rule. The government took control of syndicate elections in 1993, increased restrictions on the media in 1995, and took control of nongovernmental organization boards of trustees and foreign financing in 1999. Additionally, the Mubarak regime amended the Constitution to limit political candidates (Article 76), eliminate presidential term limits (Article 77), and remove judicial supervision of elections (Article 88). Nadia Oweidat, Cheryl Benar, Dale Stahl, Walid Kildani, Edward O'Connell, and Audra K. Grant, *The Kefaya Movement: A Case Study of a Grassroots Reform Initiative* (Santa Monica, CA: RAND Corporation, 2008), 9. Kassem, 120. Other constitutional changes that impeded democracy and did not advance human rights under Mubarak included the president's ability to make and/or veto law (Article 112), his ability to appoint and dismiss Prime Ministers (Article 141), his ability to rule by decree (Article 147), and the extension of emergency law (Article 148). Kassem, 24.

[100] Stephen Kosack and Jennifer Tobin, "Funding Self-Sustaining Development: The Role of Aid, FDI and Government in Economic Success," *International Organization* Vol. 60, No. 1 (Winter 2006), 207.

[101] Ibid., 209, 212, 206.

[102] Ibid., 213.

opportunity for aid while limited sources of human capital at the time of investment limits growth. In the worst case, extremely low cases of human capital actually result in retarded development.[103] The downside of FDI reveals itself based on the method in which it is attracted. If countries do not possess comparative advantage in an industry but create incentives for FDI it will create inefficiencies. Additionally, if tax incentives drive FDI it may encourage domestic firms to relocate offshore and do more harm than good for the local economy and government revenue.[104]

According to Stephen Kosack and Jennifer Tobin, economic growth is a product of human development. As human development increases it fuels economic growth. The increased revenues from the latter then reciprocate by increasing human development. However, economic development alone cannot spur human development and leads to unsustainable growth in the absence of the latter.[105] Economic stimulus without a corresponding increase in human development results in a vicious cycle of increasing inequality. Therefore, if governments do not prioritize human development aid may lead to a concentration of power in a minority ruling elite, creating greater inequality and less efficient economies.

Viewed from another perspective, foreign aid may fail to instigate growth due to its fungible characteristic. In this sense, it becomes a substitute "for government spending that would have occurred anyway."[106] Morgenthau asserts that economic foreign aid does not cause economic development because leaders "derive their political power in good measure from the economic status quo."[107] As a result, regimes use economic foreign aid to bolster support through patronage while maintaining control over the population's economic status. If governments do not prioritize human development then aid prevents benefits.[108] According to Morgenthau, "Foreign aid for economic

[103] Kosack and Tobin, "Funding Self-Sustaining Development: The Role of Aid, FDI and Government in Economic Success," 236.

[104] Ibid., 212.

[105] Ibid., 208.

[106] Ibid., 210.

[107] Ibid., 305.

[108] Ibid., 211.

development, then, has a very much smaller range of potentially successful operations than is generally believed."[109] This is a result of fostering economic development through free markets and democracy in societies that are unprepared for such operations.[110] In lieu of giving up the objective of helping developing countries, this observation leads one to believe that a serial approach to democracy, followed by economic reform (or vice versa), is necessary. The role human development plays in sustaining economic growth leads to the conclusion that democracy should be a pre-requisite for economic progress.

4. Measuring Egypt's Reform

After donating over $50 billion in aid to Egypt, and given its pro-democracy rhetoric since the end of the Cold War, one would expect the United States to be able to point to specific reforms or improvements in the field of human rights.[111] In the worst case, the United States should be able to show that it curtailed foreign aid to Egypt on the basis of the nation's failure to reform. Despite the fact that no metrics show a significant increase in democracy or human rights improvements in Egypt, U.S. aid has remained relatively stable.[112] In 2008, the National Defense Research Institute characterized Egypt as being "less democratic than it had been at any time" during Mubarak's term.[113] The fact that the United States supported the regime despite its continued repression leads Arab thinkers such as Ahmed Baha' al-Din Sha'ban to declare that U.S. democratic rhetoric is the biggest hindrance to reform in the Middle East.[114]

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[109] Morgenthau, "A Political Theory of Foreign Aid," 307.

[110] Morgenthau states that underdeveloped nations do not have "the moral restraint and economic and political sophistication required for successful free market and democratic operations." Ibid.

[111] Charles Levinson, "$50 Billion Later, Taking Stock of U.S. Aid to Egypt," *The Christian Science Monitor*, April 12, 2004, http://www.csmonitor.com/2004/0412/p07s01-wome.html (accessed Oct 8, 2011).

[112] As discussed earlier, the Glide Path Agreement was a bilateral agreement that reduced economic support funds from the United States to Egypt. Part of the reason for this agreement was Egypt's disdain for conditions the United States tried to make aid contingent upon. Despite Egypt's overt shunning of democratic reform, the United States FY2011 request for aid to Egypt amounted to $1.558 billion. Sharp, "U.S. Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY2011 Request," 5-7.

[113] Oweidat et. al., *The Kefaya Movement: A Case Study of a Grassroots Reform Initiative*, 7.

[114] Ibid., 44.

Egypt became less democratic in the latter years of Mubarak's rule. According to the Economist Intelligence Unit, Egypt's score on the democracy index decreased from 3.89 to 3.07 between 2008 and 2010, resulting in the nation ranking 138th out of 167 countries and scoring lower than the world average of 5.46. Egypt earned its lowest score in the category of "Electoral Process and Pluralism."[115] The highest level of opposition party victories occurred in the 1984 and 1987 elections, a feat that has not been matched in contests since that time.[116] Prior to the 1995 elections, twenty-four Muslim Brotherhood leaders were arrested under the umbrella of emergency law. In 2000, the regime arrested twenty Islamists that included "prominent professionals in the legal, medical, engineering, and academic spheres."[117] It is significant to note that these individuals were not charged with terrorism or any other form of violence, their only alleged crime was reviving the Muslim Brotherhood.[118] In 2005, the government continued its policy of election year crackdowns by arresting demonstrators advocating democratic reform. Despite this blatant disregard for democratic principles, the U.S. administrations took action to protect Egyptian aid one month after these developments occurred.[119] Therefore, not only has U.S. aid to Egypt failed to encourage reforms, it has continued unabated despite a decrease in Egyptian democracy. Although democratic reform retreated under Mubarak, Egypt has shown improvement in other areas.

The human development index includes health, education, and income in order to provide a better illustration of a nation's improvement or decline. Egypt has experienced a 1.5 percent increase in its human development since 1970. This places it above the regional average and it ranks as the eighth most improved nation in human development since 1980.

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[115] Economist Intelligence Unit, "Democracy Index 2010: Democracy in Retreat," *The Economist*, 2010, www.eiu.com/democracy *(accessed May 22, 2011),* 13. U.S. Agency for International Development, *Audit of USAID/Egypt's Democracy and Governance Activities*, 1.

[116] Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule*, 30.

[117] Ibid., 38.

[118] Ibid., 38.

[119] Oweidat et. al., *The Kefaya Movement: A Case Study of a Grassroots Reform Initiative*, 7.

In 2010 Egypt ranked 101st out of 169 countries and, at a score of 0.620, falls below the world average of 0.624.[120] However, its continued improvement is a positive sign for the nation's economic growth.

Foreign direct investment has been one variable that has changed significantly in Egypt's recent history. Despite increases in human development paralleling the increasing FDI, data from the World Bank does not lead to the conclusion that the two co-vary. Egypt experienced an 8.2 percent increase in human development from 1995–2000 with a 107 percent increase in FDI. During the nation's largest increase in FDI, 954 percent between 2000–2005, human development increased only 3.7 percent, the lowest rate in the last 15 years. Lastly, despite an average of $8.8 billion in FDI between 2006 and 2009, the percent increase in human development did not match that achieved during 1995–2000 when FDI averaged $611.8 million.[121] One explanation for the lack of rapidly increasing human development in spite of increasing FDI could be inequality, which multiple scholars point out as endemic to Mubarak's regime.[122] Additionally, Egypt may not have reaped the benefits of the recent rise in FDI yet and it may take years for the nation to realize the human development or economic benefits. For the time being, U.S. aid efforts to improve the economy via economic aid and FDI have not yielded significant effects on human development, and have illustrated the U.S. support for the status quo in lieu of meaningful democratic reform.

E.   CONCLUSION

The United States has provided significant amounts of aid to the Government of Egypt for over 30 years. This policy occurred despite a lack of democratic reform and

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[120] Human development is ranked on a scale of zero to one. The highest scoring nation in 2010 was Norway that scored 0.938. United Nations Human Development Programme, "The Real Wealth of Nations: Pathways to Human Development," *Human Development Report,* 2010, http://hdr.undp.org/en/reports/global/hdr2010/chapters/ (accessed Oct 10, 2011), 149.

[121] World Bank Development Indicators, "Foreign Direct Investment net inflows," http://www.google.com/publicdata/explore?ds=d5bncppjof8f9_&ctype=l&strail=false&bcs=d&nselm=h&met_y=ny_gdp_mktp_kd_zg&hl=en&dl=en#ctype=l&strail=false&bcs=d&nselm=h&met_y=bx_klt_dinv_cd_wd&scale_y=log&ind_y=false&rdim=country&idim=country:EGY&ifdim=country&tdim=true&hl=en&dl=en (accessed October 23, 2011).

[122] See Amin, *Egypt in the Era of Hosni Mubarak: 1981-*2011, 65-80. Ahmad al-Sayed El-Nagger, "Economic Policy: From State Control to Decay and Corruption," in Rabab El-Mahdi and Philip Marfleet, eds., *Egypt: The Moment of Change* (London, UK: Zed Books Ltd, 2009)*,* 49.

numerous accounts of human rights violations.[123] Although the U.S. may not have intended its aid to perpetuate autocratic rule, it did not influence the government to reform or improve human rights and, therefore, indirectly supported the regime. U.S. aid in Egypt has taken a separate trajectory from the democratic reform and human rights initiatives championed by multiple administrations and have led to incongruence between U.S. words and policy.

The United States has successfully achieved certain national interests as a result of its aid to Egypt. The peace between Israel and the majority of the Arab world has prevailed since 1979 and Egypt has opened up its economy to the global market while providing the United States opportunities for investment and trade. Missing from U.S. achievements in Egypt are successful democratic reform and improvements in human rights. The evidence suggests that U.S. interests in stability and trade are given higher priority than more open societies. Over the past 30 years, Egyptian stability has been contingent upon the perpetuation of authoritarian rule in Egypt; this is based largely on a fear that the democratic process will lead to the election of less desirable political leaders. Such theories lead to the broader question of whether the security provided by democratic institutions is greater than the security provided by the repression of non-liberal opposition groups.

The uncertainty following Egypt's ousting of Mubarak illustrates that stability via support for undemocratic regimes is a short-term solution. When both vertical and horizontal inequalities exist in society where an elite rule in lieu of law, the potential for violent solutions to problems remains a constant threat. Currently, the widely accepted long-term solution that provides the most resilient stability is democracy and a respect for human rights.

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[123] In *Behind Closed Doors*, Human Rights Watch states, "Although the U.S. State Department in 1992 provided a frank and generally accurate assessment of human rights violations in Egypt, Middle East Watch is not aware of one instance in 1990, 1991, or thus far this year when any administration spokesperson publicly made reference to human rights abuses in Egypt or to the need for the Mubarak government to address rights problems." Human Rights Watch, *Behind Closed Doors: Torture and Detention in Egypt* (New York: Middle East Watch, 1992), 165. Additionally, "despite the leverage that such aid and trade represent, the government of President Hosni Mubarak largely has escaped public scrutiny and sustained pressure from the United States and Europe to improve its mediocre human rights record and lift the long-standing state of emergency." Ibid.

By giving democratic reform low priority in Egypt, U.S. foreign aid has perpetuated (and potentially created new) causes for violence against both the Government of Egypt and the United States.

If the United States is going to take a long-term approach to stability in Egypt then it must demand democratic reform. The current program of aid without democratic conditions does not promote this cause. The Office of the Inspector General has reported that USAID's democracy programs, which include $200 million of discretionary allotments to Egyptian leadership per year, have not shown much success.[124] Up until 2005, the United States did not have a mechanism to ensure Egypt spent aid on democracy promotion.[125] Furthermore, based on the State Department cables that were revealed on Wikileaks, Mubarak indicated that he was not interested in democracy.[126] Therefore, one option the U.S. government has in order to foster reform is to place conditions on Egypt's aid package.

A recent article in *The Washington Post* highlighted that conditional aid may not be a viable option for U.S. policy in Egypt. According to Mary Beth Sheridan, a proposed "Senate bill would withhold up to $1.3 billion in U.S. [military] aid for 2012 until the secretary of state certifies that Egypt has held democratic elections and is protecting freedoms of the press, expression, and association."[127] Egyptian officials responded by saying that such conditions "would be detrimental to future cooperation."[128] In the wake of the Arab Spring, the United States cannot afford to go so far as cancelling the Egyptian aid program altogether since it would present the view that the nation was abandoning democracy and reinforce the idea that the U.S. was inextricably linked to Mubarak.

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[124] U.S. Agency for International Development, *Audit of USAID/Egypt's Democracy and Governance Activities*, 1. Levinson.

[125] U.S. Agency for International Development, 3.

[126] Lloyd C. Gardner, *The Road to Tahrir Square: Egypt and the United States from the Rise of Nasser to the Fall of Mubarak* (New York: The New Press, 2011), 169.

[127] Mary Beth Sheridan, "Egypt Warns U.S. on Attaching Conditions to Military Aid."

[128] Ibid.

Since the United States cannot cancel aid to Egypt it must assess the risk of putting conditions on aid against the potential for Egypt's military leaders to exit America's sphere of influence. If the United States is committed to promoting democracy and human rights then it must change its foreign aid program to one that is only guaranteed by conditions that improve the recipient country's record of democracy and human rights. The United States may also elect to engage in multilateral aid programs, however, this may diminish its leadership role and leverage in the international arena.

The correlation between U.S. aid and support for undemocratic regimes that do not respect human rights undermines America's position as the leader of the free world. Chapter III discusses how the U.S. policy of extraordinary rendition further delegitimizes its promotion of democratic ideals and provides another means of support to Mubarak's regime. In addition to undermining its own message, U.S. policy has also tacitly enabled the repression of groups that seek democratic reform and has provided an engine for radicalization, as is discussed in Chapter IV.

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III. U.S. FOREIGN POLICY AND THE RULE OF LAW

A. INTRODUCTION

The rule of law provides the backbone for the United States' model of liberal governance. As the leading proponent of democratic reform in developing nations since the end of World War II, America must ensure its actions reflect its democratic ideals if it is to maintain legitimacy. As Egypt struggles to transition to a new government in the wake of Hosni Mubarak's ouster, it is important to examine if U.S. foreign policy in Egypt has advanced or hindered the rule of law concept—both for the United States and for post-Arab Spring Egypt.

America has touted its respect for human rights and the rule of law as a theme for aggrandizing its moral position in struggles against other powers. During the Cold War, Such figures as Central Intelligence Agency (CIA) veteran Jack Devine believed that "communism could be beaten because our ideas and our society were better. We didn't need to descend to their level."[129] However, recent events have inspired some scholars to describe America as a "reckless, stumbling, delusional giant" that has lost its position of moral superiority based on policies, such as extraordinary rendition, that disrespect human rights and challenge the rule of law.[130]

The U.S. policy of extraordinary rendition brings into question the integrity of the government's adherence to the rule of law. This principle is a critical element of democratic governance; therefore, extraordinary renditions—coupled with the record of American support for an authoritarian ruler who did not respect human rights—could undermine the legitimacy of the United States as a broker of freedom along with its democratic message. Such inconsistencies may discourage Egypt from subscribing to America's model and hamper the spread of democracy while providing a platform from which radical groups can campaign for their cause.

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[129] Stephen Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program* (New York: St. Martin's Griffin, 2006), 13.

[130] Rashid Khalidi, *Sowing Crisis: The Cold War and American Dominance in the Middle East* (Boston, MA: Beacon Press, 2009), 233.

This chapter examines the U.S. policy of rendition and its relationship to the rule of law. The objective is not to determine the legality of rendition; rather it is to expose the aspects that could be interpreted as extralegal based on the interpretation of federal and international law. By doing so, the discussion will illustrate the contradictory relationship between extraordinary rendition and the promotion of the rule of law. This contradiction deteriorates the U.S. position as a champion of human rights and delegitimizes the democratic message.

First, this chapter outlines the basis for the rule of law in democracy. Next, it examines the role of international law in U.S. federal law. It compares the U.S. policy of rendition with applicable federal and international legal guidelines. In addition to U.S. policy, the examination touches on the relationship between Egypt and United States in the rendition process and the repercussions of U.S. support for Hosni Mubarak. Ultimately, it aims to illustrate the fact that the extraordinary rendition policy and the U.S.'s catering to the authoritarian Egyptian regime undermined both America's stature in the world and its democratic message, ultimately creating a less secure homeland.

B.   DEMOCRACY AND THE RULE OF LAW

The bedrock of democracy consists of human rights and the rule of law. The U.S. Declaration of Independence clearly defines the meta-ethic that democratic government depends on the protection of certain "unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" through "Governments [that] are instituted among Men, deriving their just powers from the consent of the governed."[131] The mechanism that enables this action is a well-established set of "procedural norms" or the rule of law.[132] The Declaration of Independence continues by highlighting the King's failure to abide by the law as a cause for the creation of a separate state. According to Michel Rosenfeld: "In the broadest terms, the rule of law requires that the state only subject the citizenry to publicly promulgated laws, and that the state's legislative function be

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[131] U.S. Declaration of Independence (Washington, DC: Government Printing Office, 1776).

[132] Philippe C. Schmitter and Terry Lynn Karl, "What Democracy Is… and Is Not," in Patrick H. O'Neill and Ronald Rogowski, eds., *Essential Readings in Comparative Politics, Third Edition* (New York: W. W. Norton & Company, 2010),155.

separate from the adjudicative function, and that *no one within the polity be above the law*" (emphasis added).[133] He goes on to identify the "essential characteristics of modern constitutionalism [as] limiting the powers of government, adherence to the rule of law, and protection of fundamental rights."[134] Similarly, USAID identifies the rule of law as "the cornerstone for all other elements of democracy."[135] Although many other crucial institutions either support or complement the rule of law in democracy, the latter is a key enabler of successful democratic governance.

The U.S. Constitution, along with the laws passed to support it, provides ultimate guidance on maintaining order and enforcing norms.[136] The Supremacy Clause declares: "The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made… shall be the supreme Law of the Land."[137] The Constitution caters to the sometimes divergent desires of the government and the people by creating a tension between the repressive nature of law, "the will of the majority," and the citizens' capacity to invoke statutes in order to resist state policy.[138] If the rule of law does not maintain a bipartisan stance between the government and the people, then democracy slides toward autocracy.

The rule of law has a more opaque role as its scope extends beyond national boundaries. Sovereign states establish the rule of law with the intent to serve their citizens. Therefore, civil rights do not transfer to aliens, especially on foreign soil. Conversely, the state's duty to protect its citizens does not stop at the border.

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[133] Michel Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional Democracy," *Southern California Law Review*, Vol. 74 (2001), 1307.

[134] Ibid. Rosenfeld points out that constitutionalism may not fit the perfect democratic model due to such conditions as the "familiar conflict between majoritarian laws and antimajoritarian constitutional constraints."

[135] USAID, "Rule of Law," Democracy & Governance, http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/ (accessed Aug 30, 2011).

[136] Rosenfeld, 1308.

[137] U.S. Constitution, art. 6, cl. 2.

[138] Rosenfeld, 1309.

As a result, sovereign nations often contend that the sanctity of their borders must be preserved; however, in order to protect these borders or their citizens, they claim the right to carry out acts outside those borders. When states act outside their sovereign territory, their actions invoke international law.

C.   LEGAL REGIMES

International law is not a new concept; treaties have existed since the creation of the nation-state. However, the nature and scope of international law, also referred to as the Law of Nations, has evolved in the recent past—most notably by shifting from a focus on interstate relations to state-citizen relations and human rights.[139] According to Linde, international law springs from the liberal society concept; therefore, it requires that no polity be above its jurisdiction.[140]

The oft-debated relationship between U.S. federal law and international law does little to ameliorate controversy regarding the sovereignty of the United States and its extraterritorial pursuits to preserve itself. According to A. John Rasdan: "It has been the position of legal counsel, whether under Democrats or Republicans, that the President may act contrary to the international law if necessary to execute the Constitution and other American laws."[141] The executive branch's eschewing of international law creates further dissonance on the limits of U.S. policy and presents potential challenges to the integrity of the U.S. democratic message.

International law is an inherent component of U.S. federal law. The U.S. Constitution explicitly incorporates it by including treaties in the description of the "Supreme Law of the Land."[142] However, experts point out that the Constitution fails to

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[139] Christopher Linde, "The U.S. Constitution and International Law: Finding the Balance," *Journal of Transnational Law & Policy*, Vol. 15, No. 2 (Spring 2006), 307-308.

[140] Linde describes the core principles of liberal society as "respect for fundamental human rights, limited and balanced government, and respect for the rule of law." Ibid., 306. Contrary to "New Sovereignists" that believe international law is a constraining factor of U.S. preeminence, Linde argues "that by following a policy of measured acceptance of international norms, the United States can secure [the] lasting peace" alluded to by Immanuel Kant and Francis Fukuyama. Ibid.

[141] A. John Rasdan, "A New Recipe for Renditions and Extraditions," in John Norton Moore and Robert F. Turner, eds., *Legal Issues in the Struggle Against Terror* (Durham, NC: Carolina Academic Press, 2010), 263.

[142] U.S. Constitution, art. 6, cl. 2.

address customary international law, which this paper defines as norms that are common among nations and are inspired by the notion that they conform to an overarching international legal premise.[143] The resulting debate focuses on whether or not the United States is required to abide by customary international law, since it is not codified in treaty, federal statute, or the Constitution, and the Supremacy Clause neither confirms nor denies its role in the U.S. rule of law.[144] Despite the debate over whether the United States must abide by customary international law, there is a consensus that the United States does treat customary international law as federal law. *Murray v. Schooner Charming Betsy* is one example of the Supreme Court's interpretation that, in the absence of Constitutional decree, federal statute, or judicial ruling the Law of Nations applies.[145]

More recently, *Filartiga v. Pena-Irala* and *Sosa v. Alvarez-Machain* supported international law's relevancy in federal common law.[146] The first case concerned the kidnapping, torture, and murder of Joelito Filartiga in Paraguay and provides an example of a U.S. court decision against a defendant based on a foreign national's actions in a foreign state.   After Alerico Norberto Pena-Irala escaped criminal prosecution in Paraguay, he moved to the United States, where the Filartigas sought to bring a civil suit against him in the Eastern District of New York. After the court approved Pena's motion to dismiss the case based on a lack of jurisdiction, the Filartigas appealed to the Second Circuit.[147] In the Second Circuit's ruling on *Filartiga* it affirmed the applicability of the Law of Nations in federal law as a basis for trying Pena for wrongful death.   Justice

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[143] Linde, "The U.S. Constitution and International Law: Finding the Balance," 309.

[144] Ibid.

[145] During an undeclared war with France U.S. forces seized the Charming Betsy under the Nonintercourse Act of 1880. The U.S. law prohibited U.S. citizens from trading with France; however, the Charming Betsy's owner was Danish. Based on international laws of neutrality, the Supreme Court ruled the ship's seizure as illegal. This led Chief Justice Marshall to declare, "An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." Quoted in Linde, 312-3. If Congress is limited in its actions, other than *in extremis*, then the same principles should apply to the President. Furthermore, Justice Gray's decision in *The Paquete Habana*, which delineates prizes of war from fishing vessels protected by international law in the Spanish-American war, states, "International law is part of our law…. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations." Quoted in Linde, 313.

[146] Ibid., 315-316, 323-324.

[147] Linde, "The U.S. Constitution and International Law: Finding the Balance," 315.

Kaufman stated: "We find that an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations."[148] He goes on to declare: "The constitutional basis for the Alien Tort Statute is the law of nations, which has always been part of federal common law."[149] The Second Circuit's ruling against a foreign citizen in a foreign nation required it to invoke international law because U.S. law does not apply to foreign citizens outside the country.

Similarly, Humberto Alvarez-Machain was a Mexican national accused of being involved in the torture of Drug Enforcement Agency (DEA) agent Enrique Camarena-Salazar in Mexico. After his acquittal in United States Supreme Court, Alvarez sought compensation in a civil suit for false arrest and a violation of the Law of Nations.[150] Ultimately, the Supreme Court ruled against Alvarez's claims based on the lack of a "binding customary rule" on which he might base such a claim. [151] The Supreme Court's failure to rule in favor of Alvarez illustrated that the U.S. legal system uses customary international law when it declared that Alvarez's defense of arbitrary detention "violates no norm of customary international law" as grounds to deny his claim.[152] *Filartiga* and *Alvarez-Machain* elucidate the U.S. Constitution's incorporation of international law, including customary international law, into federal law.[153]

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[148] *Filartiga v Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

[149] Ibid.

[150] Due to Mexico's refusal to extradite Alvarez, the DEA hired Sosa to detain him and bring him to the U.S. where he was arrested. Linde, "The U.S. Constitution and International Law: Finding the Balance," 323. For further discussion on the topic of types of rendition see the next section of this chapter. For court rulings on similar subjects see *U.S. v Alvarez-Machain* 504 U.S. 655 (1992), *Ker v Illinois* 119 U.S. 436 (1886), and *Frisbie v Collins* 342 U.S. 519 (1952).

[151] Ibid., 329

[152] *Sosa v Alvarez-Machain*, 542 U.S. 692 (2004).

[153] Harold Hongju Koh, "Is International Law Really State Law?" *Harvard Law Review*, Vol. 111, No. 7 (May 1998), 1861. Curtis A. Bradley and Jack L. Goldsmith, "Customary International Law as Federal Common Law: A Critique of the Modern Position," *Harvard Law Review*, Vol. 110, No. 4 (1997), 8117.

Therefore, the U.S. democracy and its rule of law incorporate both international law and customary international law. The United States must consider each of these legal imperatives when it crafts foreign policy.[154]

Linde goes so far as to describe the United States as a "pariah among liberal democracies" in recent history due to his belief that the executive showed wanton disregard for international law.[155] As a result of multiple recent unilateral policies the "U.S. international law record, particularly in the human rights realm, is inconsistent at best, hypocritical at worst, but clearly incoherent."[156] Legal counsel immediately after the attacks on September 11, 2001 (9/11), illustrated a new interpretation of the rule of law as lawyers John Yoo and Alberto Gonzales, among others, advised the executive that he "had almost unfettered latitude in his prosecution of the war on terror."[157] Two factions interpret this development in very different lights. Some contend that the actions taken, regardless of whether they adhered to international rule of law, were warranted since they were done in the interest of national security and the spreading of democracy.[158] On the other hand, Jane Mayer contends the policies the United States carried out in the wake of 9/11 presented the "most radical challenge to the rule of law in

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[154] Professors Curtis Bradley and Jack Goldsmith refer to the incorporation of international law as the modernist position. Despite the modernist prevalence, Bradley and Goldsmith argue that state sovereignty is a victim when subjected to the constraints of international law. The Constitution leaves room for differing interpretation since it addresses the requirement for government to resolve international disputes that may not be covered by federal law while, according to some interpretations, providing the President the option to disregard international law if required to carry out his Constitutional duty. Koh, 1828. Rasdan, "A New Recipe for Renditions and Extraditions," 263.

[155] Linde, "The U.S. Constitution and International Law: Finding the Balance," 307. Jürgen Habermas, "Interpreting the Fall of a Monument," *German Law Journal*, Vol. 4, No. 7 (2003), 706-707.

[156] Linde, 331.

[157] Jane Mayer, "Outsourcing Torture: The secret history of America's 'extraordinary rendition' program," *The New Yorker*, February 14, 2005, 9. According to Assistant Attorney General Jay Bybee, "Under the circumstances of the current war against al Qaeda and its allies, application of Section 2340A [prohibiting torture] to interrogations undertaken pursuant to the President's Commander-in-Chief powers may be unconstitutional. Finally, even if an interrogation method might violate Section 2340A, necessity or self-defense could provide justifications that would eliminate any criminal liability." Jay S. Bybee, "Memo 14: Memorandum for Alberto R. Gonzales Counsel to the President," in Karen J. Greenberg and Joshua L. Dratel, eds., *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005), 214.

[158] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 144.

American history."[159]   Because the United States has incorporated international law into its legal system, analysis of U.S. policy must include both international law and customary international law as litmus.   If U.S. policy operates outside these guidelines then it compromises the nation's role as the champion of human rights and democratic rule.

D.   EXTRAORDINARY RENDITION

1.   Types of Rendition

Black's Law Dictionary defines rendition as "the return of a fugitive to the State in which he is accused to having committed a crime."[160]Grey describes rendition as "the transfer of a prisoner by U.S. government agents without any kind of formal extradition proceedings or legal hearing."[161]   He goes on to delineate a different type of procedure, called extraordinary rendition, which is "the transfer of a prisoner by U.S. agents to any place but an American court of law."[162]   Although types of rendition have occurred since the Reagan Administration, the nature of the policy has changed with the international environment.   According to Rasdan, extraordinary rendition has been necessary "because the countries in which the suspects found themselves were unsafe, dysfunctional, or unwilling to cooperate fully with the American government."[163]   One challenge to extraordinary rendition concerns the power of the executive in the U.S. democracy. The system of checks and balances within the U.S. government manage the magnitude of the executive's power, one being judicial review that provides a mechanism to assess the legality of actions.   The role of this element in U.S. democracy is important to keep in mind when comparing pre-9/11 renditions to those that occurred after the attacks.

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[159] Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008), 8.

[160] Henry Campbell Black, Joseph R. Nolan, and Jacqueline M. Nolan-Haley, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence Ancient and Modern*, 6th ed. (St. Paul, MN: West Publishing Co., 1990), 1296.

[161] Grey, 38.

[162] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 38.

[163] Rasdan, "A New Recipe for Renditions and Extraditions," 253.

Before 9/11, publicly available accounts of rendition illustrate that operations showed a basic level of respect for the rule of law. Operation Goldenrod undertook the rendition of Fawaz Yunis from international waters to the United States for his connection to airline hijackings in the 1980s.[164] According to Rasdan, the CIA avoided extradition because of the unreliability of Lebanon's government.[165] The rendition respected international rule of law because it did not take place within another sovereign nation, was based on a federal arrest warrant issued by the Department of Justice (DOJ), and ended with Yunis receiving a trial in the United States.[166] Therefore, the arrest of Yunis was by no means extraordinary, violated no legal precedent, and was carried out with the supervision of the executive and judicial branches. However, when suspects remain within a state that does not have the will or capability to extradite them to the U.S. that state's sovereignty presents legal roadblocks to the U.S. goal of bringing individuals living overseas to trial.

U.S. v. Alvarez-Machain illustrates another type of rendition meant to avoid U.S. liability in operating outside the rule of law. In this case, the Mexican government did not agree to extradite the suspect, Humberto Alvarez-Machain, despite the United States indicting him and issuing an arrest warrant for involvement in the death of a DEA officer.[167] In order to render Alvarez without having U.S. agents violate Mexico's sovereignty, "the DEA hired Mexican nationals to capture him and bring him to the United States."[168] After his arrival and arrest in the United States, Alvarez challenged the government in court by alleging that the United States had violated its extradition treaty with Mexico. The Supreme Court ruled that the method by which the suspect entered the United States had "no bearing on the jurisdiction of the federal court."[169]

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[164] Ibid., 253.

[165] Ibid.

[166] Ibid., 253. Grey, 134.

[167] Linde, "The U.S. Constitution and International Law: Finding the Balance," 323.

[168] Ibid.

[169] Ibid, 324. David Weissbrodt and Amy Bergquist, "Extraordinary Rendition and the Torture Convention," *Virginia Journal of International Law,* Vol. 46, No. 4 (2006), 588. Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 135.

Therefore, the Supreme Court, while not endorsing such methods of rendition, was complicit with the notion that they were not extralegal tools of U.S. policy under these circumstances. Weissbrodt and Bergquist contend that, by turning a blind eye to the act of kidnapping that permitted Alvarez's arrest, the Supreme Court exhibited a "cavalier disregard for international law" that would foster the evolution of the U.S. extraordinary rendition policy.[170]

The Yunis and Alvarez cases are fundamentally different because the transfer of the latter was not carried out directly by U.S. agents and it originated in a sovereign state. However, they share the common traits that both men were charged with a crime and delivered to America for purpose of a trial in court. Extraordinary rendition emerged during the Clinton Administration and changed the nature of the policy. In response to the terrorist threat, extraordinary renditions did not require U.S. courts to charge the rendered individual with a specific crime, included the seizure of suspects in foreign countries, and resulted in the United States delivering those individuals to a foreign state.[171] In addition to the operational changes, extraordinary renditions included a change of objectives—the process focused on delivering suspects to other countries for the purpose of intelligence gathering rather than for criminal trial.[172]

The practice of extraordinary rendition in the 1990s appeared to abide by U.S. law while presenting potential challenges in the light of international law. Presidential Decision Directive (PDD)-39 states: "Return of suspects by force may be affected without the cooperation of the host government."[173] This policy provides executive authorization for U.S. agents to remove suspects from sovereign nations with or without those nations' consent. Although *Ker v. Illinois* is another example, affirmed by *Alvarez-Machain*, that illustrates the judicial branch's lack of concern for the "manner in which

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[170] Weissbrodt and Bergquist, 588. Alvarez's rendition could be classified as "irregular" based on the questionable procedure used to bring him to the United States. However, it does not qualify as "extraordinary" according to Grey's definition since he was brought to trial in the United States.

[171] Weissbrodt and Bergquist, "Extraordinary Rendition and the Torture Convention," 588.

[172] Ibid. Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 135.

[173] Presidential Decision Directive-39, "U.S. Policy on Counterterrorism," The William J. Clinton Presidential Library, http://www.clintonlibrary.gov/pdd.html (accessed Sep 12, 2011).

[the suspect] arrives in the court," the opinion remains nebulous on whether it condones what sovereign states may consider kidnapping.[174]

Despite PDD-39's aggressive wording, rendition operations before 9/11 were structured to minimize the potential that critics would label them as extralegal. According to Weissbrodt and Bergquist: "The receiving country had to have issued an arrest warrant… the Administration scrutinized each rendition… [and] the CIA notified the local government and obtained an assurance from the receiving government that it would not ill-treat the individual."[175] One example of such an action took place with the "Returnees from Albania." In this rendition the United States worked with Albanian authorities to arrest six men associated with Ayman al-Zawahiri, al-Qaeda's second in command, in the lead up to U.S. operations in Kosovo.[176] The U.S. cooperation with Albania, and the fact that the suspects had either Egyptian warrants or convictions in absentia, reduced the legal jeopardy of the operation. On the other hand, Egypt's poor human rights record brought into question the legality of U.S. actions under Article 3 of the United Nations (U.N.) Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), which this paper will cover in more detail later. In what critics of rendering suspects to Egypt could characterize as an ethical victory, the United States eventually shied away from working with the regime on renditions. According to *The Washington Post*, "After years of fruitless talks in Egypt, President Bill Clinton cut off funding and cooperation with the directorate of Egypt's

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[174] U.S. agents forcibly removed Frederick Ker from Peru in order to face trial for larceny in the U.S. When he protested under the premise that he had been kidnapped the "Supreme Court judged that the manner in which he arrived before the court was of no importance to a U.S. court." Grey, 135. In *Frisbie v Collins*, the Supreme Court stipulated that the federal Kidnapping Act took a backseat to justice when it upheld Shirley Collins' conviction for murder in Michigan despite his claim that he had been "forcibly seized" in Illinois and brought to Michigan against his will. Ibid. *Frisbie v Collins* 342 U.S. 519 (1952).

[175] Weissbrodt and Bergquist, 589.

[176] Katherine Hawkins, "The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition,'" *Georgetown Immigration Law Journal*, Vol. 20 (Winter 2006), 237. Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*, 114.

general intelligence service, whose torture of suspects has been a perennial theme in State Department human rights reports."[177]

2. Rendition Policy After 9/11

The U.S. policy of rendition largely adhered to the spirit of the rule of law before 9/11 despite some potential deviations from CAT. The Clinton Administration's respect for its obligation to international law resulted in an apparent restriction on extraordinary renditions involving receiving countries that subscribed to torture. In doing so, the administration maintained some U.S. control over the treatment of a subject after he/she arrived in the receiving state. The Bush Administration's extraordinary rendition policy with Egypt after 9/11 forfeited U.S. control of individuals' rights to Egyptian authorities and bifurcated extraordinary rendition and any clear adherence to the rule of law.

The unilateral delivery of individuals to foreign countries makes the United States vulnerable to critiques that its policies are extralegal. The three main components of the debate surrounding this subject are the lack of judicial or executive review, the sovereign rights of states, and torture. After 9/11, the evolution of the U.S. extraordinary rendition policy deviated from the rule of law.

The executive's ability to change the course of U.S. policy is rooted in specific interpretations of the U.S. Constitution. David Addington, legal counsel to Vice President Cheney, advised the Administration that (according to the Constitution), "The President, as Commander in Chief, had the authority to disregard virtually all previously known legal boundaries if national security demanded it."[178] This approach to national security, manifested in an extraordinary rendition program that executed at the edge of the legal envelope, provides substantial evidence to enable scholars to question the rule of law's status in U.S. foreign policy and may undermine U.S. status and its democratic message abroad.

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[177] Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations: 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *The Washington Post*, December 26, 2002, http://www.washingtonpost.com/wp-dyn/content/article/2006/06/0 (accessed Sep 12, 2011).

[178] Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*, 51.

Unlike the close control of renditions that required a warrant and review by the executive branch before 9/11, after the terror attacks, President Bush issued a "memorandum of notification" that waived the requirement for "White House, Department of State, or DOJ approval of individual prisoner's transfers."[179] While this action does not cause the policy to take on an extralegal nature, the removal of judicial review stifles the judiciary's constitutional duty to interpret applicable laws and reduces the legitimacy of a policy's methods, especially when coupled with a lack of executive oversight.

Under federal law, legal scholars can construe the removal of an individual from a sovereign nation, without using tools such as extradition, as kidnapping. U.S. code describes kidnapping as the "unlawful seizure of a person."[180] Detaining an individual without a warrant is one example of an unlawful seizure and is kidnapping in United States or foreign jurisdictions. Cases of extraordinary rendition since 9/11 have included instances of bilateral cooperation and unilateral action; the latter involves the act of kidnapping.[181]

One example of an extraordinary rendition operating outside the rule of law was the seizure of Abu Omar (Osama Nasr) in Milan in 2003.[182] The United States rendered Abu Omar from Italy to Egypt based on his alleged ties to al-Qaeda despite his having been granted asylum in Italy.[183] Ultimately, an Italian court held the CIA accountable for the kidnapping of Abu Omar by convicting 22 officers, along with a U.S. Air Force

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[179] Hawkins, "The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition,'" 15.

[180] 18 U.S. Code §1201.

[181] An example of bilateral cooperation is the rendition of Mohammed al-Zery and Ahmed Agiza from Sweden to Egypt. In this case, the Swedish government agreed to deliver the individuals to the U.S. after denying their requests for asylum. Additionally, Egyptian officials were present throughout the operation allowing the U.S. to claim the individuals were never in U.S. custody and, therefore, it would be difficult to prove the U.S. violated CAT. Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 29.

[182] Ibid., 194.

[183] Hawkins, "The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition,'" 20. Grey, 201.

officer, in 2009.[184] In this case, the unlawful seizure of a protected citizen in a foreign nation qualified as kidnapping under both international and U.S. law. Therefore, the Abu Omar case provides one example of extraordinary rendition taking on an extralegal nature and attempting to operate outside the rule of law by violating a sovereign nation (international law) and unlawfully seizing an individual (international, Italian, and U.S. law).

3. Extraordinary Rendition and Democracy

The cleavage between U.S. policies regarding extraordinary rendition and the democratic ideal that champions the rule of law and human rights delegitimizes U.S. status and initiatives overseas. The "Jenin Paradox" threatens to create counterproductive effects when state power is used in a manner that does not reflect the rule of law. Former MI6 officer Alstair Crooke describes this condition as the result of brutal measures that create more new enemies through radicalization than it kills.[185] U.S. extraordinary renditions have the potential to help radicalize both the individuals that the United States renders as well as those that lose faith in U.S. democratic benevolence due to policies that operate without considerable regard for the rule of law.[186] In addition to the aforementioned legal and political challenges, under the purview of CAT, U.S. rendering of suspects to Egypt presents another potential compromise of international and U.S. law that challenges democratic ideals in both the United States and, potentially, in Egypt.

E. TORTURE

The U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) defines torture and provides verbiage that prohibits both torture and complicity in the act. Article 1 describes torture as "*severe* pain or suffering, physical or mental… intentionally inflicted on a person for such purposes as obtaining

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[184] Craig Whitlock, "Italian court convicts 23 Americans in CIA rendition case; extradition undecided," *The Washington Post*, November 4, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/11/04/ (accessed Aug 30, 2011).

[185] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 246.

[186] One example of the extraordinary rendition of a innocent subject concerns that of Maher Arar. The U.S. wrongfully rendered the Canadian citizen to Syria in 2002. Grey, 62-78. Hawkins, "The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition,'" 3.

from him or a third person a confession" (emphasis added) and specifies further that the "pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".[187] This definition fails to define what constitutes a confession and what constitutes severe pain or suffering. From a legal perspective, if the torture is intended to produce information instead of the individual's confession then a defendant could argue that it is not in violation of Article 1. The definition of severe pain or suffering is a topic addressed in U.S. legal discussions regarding its own torture legislation.

U.S. legal code defines torture as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain."[188] In 2002, Assistant Attorney General Jay Bybee decreed that U.S. law defined severe physical pain as "of an intensity akin to that which accompanies serious physical injury such as death or organ failure."[189] According to Grey, varying interpretations of the adjective severe could provide lacunae in the law and reduce grounds for legal challenges to "stressful questioning procedures."[190] Therefore, international and U.S. use of the term *severe* to define torture does not provide clear evidence that extraordinary rendition is illegal under Article 3 of CAT that states, "No party shall expel, return ("refouler") or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture."[191]

The U.S. Congress ratified the CAT in 1994 "subject to certain declarations, reservations, and understandings."[192] As a result, U.S. law incorporated the CAT definition that added the stipulation that the act of torture can occur through "consent or

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[187] United Nations, "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," December 10, 1984, *United Nations Treaty Series* 1465, art. 1.

[188] 18 U.S. Code §2340.

[189] Bybee, "Memo 14: Memorandum for Alberto R. Gonzales Counsel to the President," 214.

[190] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 165.

[191] United Nations, "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," art. 3.

[192] Michael John Garcia, "U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques," Congressional Research Service Report for Congress, RL32438, Washington, DC, 26 Jan 2009, 4.

acquiescence" and is not limited to the actual person committing the torture.[193]   In addition to Article 3's limits on extraordinary rendition and extradition, Article 4 directs states to criminalize torture, including "complicity."[194] Furthermore, Title 8 of the Code of Federal Regulations (CFR) states, "Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity."[195] Pursuant to these legal guidelines, if U.S. officials had "substantial grounds" to believe Egypt would torture rendered individuals then the state had violated both international and U.S. law.

The U.S. government has some recourse when addressing potential CAT violations in renditions to Egypt. Prior to 2004, the DOJ determined that "despite the fact that one may know for certain that torture will occur, it does not equate to specific intent."[196]   In 2004 DOJ, while not reneging on its aforesaid statement, advised the President that it would not use such logic to approve what could be construed as torture.[197] If the United States had used the lack of specific intent as a means to deny consent, acquiescence, or party to torture in Egypt prior to 2004, then the change in policy is indicative of the potentially extralegal nature of earlier actions.

F.   DEBATE OVER EXTRAORDINARY RENDITION

The policy of extraordinary rendition provides a means for the United States to disrupt terrorist operations against its interests with less legal constraints.   The executive's ability to bypass legal processes provides the capability to rapidly act on information in order to pursue elusive targets or halt imminent attacks.[198] Additionally, outsourcing the detainment of individuals lessens the burden on the U.S. legal and

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[193] United Nations, art. 1.

[194] United Nations, art. 4.

[195] 8 CFR §208.18 (a) (7).

[196] Garcia, "U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques," 9.

[197] Ibid., 10.

[198] "Fact Sheet: Extraordinary Rendition," American Civil Liberties Union, December 6, 2005, http://www.aclu.org/national-security/fact-sheet-extraordinary-rendition (accessed Nov 29, 2011).

detention system.[199]   According to Grey, the operations that netted Khalid Sheik Mohammad and Abu Zubaydah both provided useful information for U.S. counterterrorism efforts.[200] On the other hand, the Maher Arar case is indicative of a policy that may victimize innocent people and Abu Omar's extraordinary rendition illustrates an operation that interfered with an ongoing investigation by the host nation.[201] One other topic of debate that is a byproduct of the policy is torture.

Two facets of the argument over torture concern legality and ethics. This thesis has already established the legal premise against torture, although there have been arguments that challenge that assertion.[202] The Office of Legal Counsel's decision that detainees were not entitled to certain rights set the course for the administration's rationalization of torture without judicial review. It is not surprising that there is wide consensus among scholars and law-makers that torture is not only illegal, it presents serious ethical dilemmas.[203]

Although the law may ban torture (and, therefore, extraordinary rendition that leads to torture) arguments exist that call for its use in specific situations. Associate Professor of Philosophy Fritz Allhoff examines the subject in detail in his article "Terrorism and Torture." His analysis indicates that states may validate torture by relying on the utilitarian argument that contends that the benefit for the greater good

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[199] David Johnston, "Rendition to Continue, But With Better Oversight, U.S. Says," *The New York Times*, August 25, 2009, http://www.nytimes.com/2009/08/25/us/politics/25rendition.html (accessed Nov 29, 2011).

[200] Grey points out that there are camps that are skeptic of the latter's veracity. Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 243.

[201] Ibid., 194, 243.

[202] Deputy Assistant Secretary John Yoo and Special Council Robert Delabunty, in a memorandum to the Department of Defense's General Counsel (William Haynes) concerning the applicability treaties and laws to detainees, declared that neither the Geneva Conventions, War Crimes Act, nor customary international law protects the rights of al-Qaeda or Taliban militia members. Regarding the latter, they state: "Customary international law cannot bind the executive branch under the Constitution because it is not federal law." John Yoo and Robert J. Delabunty, "Memo 4: Memorandum for William J. Haynes II General Counsel, Department of Defense," in Karen J. Greenberg and Joshua L. Dratel, eds., *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005), 70.

[203] Fritz Allhoff, "Terrorism and Torture," *International Journal of Applied Philosophy*, Vol. 17, No. 1 (2003), 105. United Nations, "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment."

outweighs the value of respecting the individual's rights.[204] Michael Levin's illustrates this by describing the dilemma of torturing a recalcitrant terrorist that refuses to reveal the location of a bomb that will kill thousands imminently or accepting mass death.[205] In this case, torture provides for the greatest good and can therefore be construed as the ethical choice.

On the other hand, Allhoff points out that, from a deontological perspective, torture is never acceptable. This is based on the fact that it uses the individual as a means to an end an, in doing so does not "respect him as an autonomous agent and constitutes an attack on is dignity."[206] However, this ultimately returns to the utilitarian argument since the interrogator has a duty to both fulfill his office that requires the protection of the masses while respecting the rule of law (i.e. the prisoner's rights). In this tragic moral dilemma, the former typically takes precedence over the latter and may result in a justification of torture, especially if one subscribes to the belief that a terrorist's actions invalidate certain rights.[207] However, this belief presumes that the detainee is guilty of a crime, which requires a trial in the United States legal system. As a result, the ethical debate over extraordinary rendition, and its common byproduct of torture, returns to the legal realm for analysis.

In order to overcome the potential for compromising legal integrity, Alan Dershowitz suggests that the government create rules to regulate torture. Included in these rules would be the requirement that the President "sign a torture warrant in which he says, 'I'm taking responsibility for breaking the law, for violating treaties, for doing an extraordinary act of necessity.'"[208] This approach blatantly disrespects democracy's principle of the rule of law by condoning illegal action and circumventing the judiciary's responsibility to check the executive.

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[204] Allhoff, 107.

[205] Michael Levin, "The Case For Torture," http://people.brandeis.edu/~teuber/torture.html (accessed Nov 29, 2011).

[206] Allhoff, "Terrorism and Torture," 107.

[207] Ibid., 108.

[208] Steve Inskeep, "Rules Should Govern Torture, Dershowitz Says," *NPR*, June 27, 2006, http://www.npr.org/templates/story/story.php?storyId=5512634 (accessed Nov 29, 2011).

Those in opposition to torture point out that not only is it illegal in accordance with federal and international law, it often results in unreliable information and it destroys America's image overseas. The case of Ibn al-Sheikh al-Libi is perhaps the most infamous case of misinformation through torture since, while under duress, he provided false testimony that was used to support the U.S. decision to invade Iraq in 2003. Furthermore, when a proxy such as Egypt carries out such tactics it is extremely difficult for patrons to determine if information is useful or not.[209] Grey points out that, ultimately, as a country that champions the rule of law and human rights, the United States cannot allow "torture… [to help] shape how the rest of the world sees us" since it is discordant instead of congruous with democracy.[210]

F.   EGYPT'S ROLE IN RENDITION

Egypt has a long record of human rights abuse. The U.S. State Department has published reports that illustrate its awareness of these violations. The 2003 report, issued the same year as Abu Omar's extraordinary rendition to Egypt, stated that that nation's record on human rights was marred by torture committed by both state and local police.[211] Assuming the Department of State uses U.S. federal law's definition of torture, this report indicates that Egypt's security apparatus' techniques met both U.S. legal and CAT definitions of torture. Since the United States possessed this information, and supported by the fact that U.S. criminal law considers tacit understanding as evidence of the crime of conspiracy to torture, Abu Omar's rendition to Egypt is an example of U.S. policy deviating from the rule of law.[212]

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[209] One key concern is determining if the information is unbiased or if it has been influenced by incentives. For example, a country may feel pressure to provide information regardless of the interrogation's outcome out of self-interest (i.e. perpetuating aid or realizing political motives). Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 243.

[210] Ibid., 244.

[211] U.S. Department of State, *Egypt: Country Report on Human Rights Practices*, Prepared by the Bureau of Democracy, Human Rights, and Labor 2002, March 31, 2003, http://www.state.gov/g/drl/rls/hrrpt/2002/18274.htm (accessed Sep 12, 2011).

[212] 18 U.S. Code §2340A(a). Garcia, "U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques, 7. Grey, 221.

On the other hand, one legal argument focuses on the quantification of "substantial grounds" that indicate the potential that an individual would be tortured. According to the U.S. Senate, "substantial grounds" equates to greater than a 50 percent chance of being tortured.[213] This formulation coincides with the Seventh Circuit's ruling in *Rashiah v. Ashcroft* that declared the potential that the *individual* will be tortured matters more than the country's human rights record.[214] Therefore, if an individual does not belong to a group that has been persecuted by the receiving state, it is very difficult to prove that there is reason to believe they will be tortured. These facts could provide a basis for the United States to categorize an extraordinary rendition as lawful despite a receiving country's poor record on human rights.

G.   CONCLUSION

This research has focused primarily on the U.S. policy of rendition in order to examine if it adheres to the democratic ideal promoted by American leadership. Recent extraordinary rendition policy has illustrated disregard for international law and human rights, making it resemble a tool of more coercive governments that the United States typically travails against. Although these measures may seem necessary for short-term security and stability, the United States must consider the long-term effects of policies that may decrease the legitimacy of both democracy and the nation's status as a leader in human rights.

Extraordinary rendition and torture are not compatible with democratic governance. The former is a practice that is unnecessary given the fact that countries already have extradition agreements. One potential side effect of extraordinary rendition, torture, is a violation of the rule of law and, according to many scholars and practitioners, does not provide reliable results. Current legal definitions of torture skew the debate away from the most important effects of U.S. policy.

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[213] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 222.

[214] Hawkins, "The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition,'" 10.

The rule of law depends on clear guidance or consistent interpretation in order to maximize legitimacy. The U.S. policy of extraordinary rendition, along with U.S. support for Mubarak's authoritarian government, has relied on novel interpretations of law. It is critical that U.S. policy respects the role of all forms of international law in its implementation. The U.S. Constitution and court rulings clearly support the incorporation of international law into federal law. The belief that the President can temporarily annul his obligation to international law is unconstitutional since international law is an integral part of the Constitution.

Democratization is one policy that the Middle East can use to help itself emerge from the current crisis. When U.S. programs delegitimize liberal ideals it may cause Arab countries to shun democratic reform. Chapter IV examines how U.S. aid to repressive regimes—along with its U.S. policy's disregard for the rule of law—inhibits reform, foments radicalization, and reduces American security.

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IV. U.S. POLICY AND POLITICAL ISLAM

A. INTRODUCTION

Political Islam has been the subject of scholarly debate for much of the past 40 years. The fall of communism has led to U.S. policymakers adjusting their focus towards terrorist acts committed by Islamic extremists. Islamic groups have been responsible for the majority of actual or planned attacks against the United States since the end of the Cold War. Many experts would consider Al Qaeda the most recognized terrorist group after its attacks on September 11, 2001 (9/11). Since the events of that day, the United States has foiled at least 41 additional terrorist plots on American soil or on airlines enroute to the nation[215]. All of the these attacks, along with U.S. Army Major Nidal Hasan's deadly assault at Fort Hood, Texas, have included links to radical Islamic groups. Such groups characterize one extreme of the political Islam spectrum and, in order to relate U.S. policy to terrorism, it is crucial that research examines how policies interact with these groups' radicalization.

If policymakers can quell the scope of radicalization they will help limit the threat to the United States and increase homeland security. However, dialogue focused on only the radical portion of political Islam that represents the fringe may cause a mischaracterization of Muslim politics and prevent policymakers from discovering other factors that may contribute to decreased national security. Therefore, research must encompass the broader question of how U.S. policy empowers or inhibits political Islam at both ends of the political spectrum.

This chapter relates a theory of radicalization to U.S. foreign policy in order to illustrate how America has directly contributed to the radicalization of Islamists through foreign aid and extraordinary rendition. In addition to decreasing homeland security by providing a cause for extremists to galvanize against, U.S. foreign policy stifles the

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[215] James Jay Carafano, Matt Mayer, and Jessica Zuckerman, "Forty-First Terror Plot Foiled: Homegrown Threat Thwarted by Local Law Enforcement and Intelligence," The Heritage Foundation, September 29, 2011, http://www.heritage.org/research/reports/2011/09/forty-first-terror-plot-foiled-homegrown-threat-thwarted-by-local-law-enforcement-and-intelligence (accessed Nov 8, 2011).

progress of moderate political Islam. In order to elucidate this concept, this chapter will demonstrate how the aforementioned U.S. policies have indirectly undermined these moderate arms' attempts to hasten a transition to democracy in Egypt.

The discussion begins by establishing a working definition of political Islam in the context of current literature and briefly examining the historical relation between Islam and the state. Next, it juxtaposes the concept of political Islam against the democratic norms of secularism and political participation. The research highlights the case of Egypt, drawing on discussions from earlier chapters, to illustrate U.S. foreign policy's effect on political Islam. Lastly, the discussion uses a psychological model for determining the interrelatedness of U.S. foreign policy and radicalization.

B.   POLITICAL ISLAM

Political Islam spans a vast scope of topics and is not limited to the subject of religion in the state. According to Peter Mandaville, "Islam and politics commingle in almost infinite variety across a vast range of settings, issues, actors, and levels of analysis."[216] While political Islam may be a broad concept, consensus exists that individual Islamist movements tend to galvanize based on local conditions.[217] According to American policymakers, the allure of Islamism is based in deteriorating "socio-economic and political conditions" and does not represent a new, competing ideology in competition with democracy.[218] Fawaz Gerges supports this claim by describing America's historical stance on freedom of religion as a position that puts it in a supportive position of Islam instead of being engaged in a clash of civilizations.[219]

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[216] Peter Mandaville, *Global Political Islam* (New York: Routledge, 2007), 332.

[217] John L. Esposito, *Political Islam: Revolution, Radicalism, or Reform?* (Boulder, CO: Lynne Rienner Publishers, Inc., 1997), 5. Mandaville, 341. Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford, UK: Oneworld Publications, 2008), 207.

[218] Fawaz A. Gerges, *America and Political Islam: Clash of Cultures or Clash of Interests?* (Cambridge, UK: Cambridge University Press, 1999), 230.

[219] Ibid., 230.

Literature sometimes characterizes political Islam as a radical agenda that hastens a return to the "Golden Age" of the religion.[220] In order to achieve this goal nations must make politics "subservient to religion" with the rule of law based solely on *shari'a* (Islamic law) since Islam recognizes God as the only sovereign.[221] A chasm divides the liberal and radical Islamists over whether society should base politics on a literal interpretation of the Qur'an or as articulations "to match with prevailing norms."[222] Instead of having a discrete set of societal or political norms, political Islam may serve governments better when it acts as a meta-ethic from which norms precipitate. Prior to expanding on this concept, it is import to outline the evolving perspectives of political Islam.

1. The "Failure" of Political Islam

In his analysis of political Islam, Olivier Roy characterizes the movement as a failure that is advocating a globalized application of Islam. In *Globalized Islam*, Roy states that contemporary Islamists can "either opt for political normalization within the framework of the modern nation-state, or evolve towards what [he] termed neofundamentalism, a closed, scripturalist and conservative view of Islam that rejects the national and statist dimension in favor of the *ummah*, the universal community of Muslims, based on *shari'a* (Islamic law)."[223] He goes on to point out that his concept of neofundamentalism describes a phenomenon that does not form distinct groups (i.e. states or political parties) but is an agent that radicalizes individuals outside the tradition Arab region.[224] This thesis will not focus on the individualized Islamism Roy describes in order to limit its scope, although the relevance of individual radical Islamists to U.S. homeland security demands further scrutiny.

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[220] Ray Takeyh and Nikolas K. Gvosdev, *The Receding Shadow of the Prophet: The Rise and Fall of Radical Political Islam* (Westport, CT: Praeger Publishers, 2004), 14.

[221] Nazih N. Ayubi, *Political Islam: Religion and Politics in the Arab World* (London, UK: Routledge, 1991), 3. Takeyh and Gvosdev, 5.

[222] Mandaville, *Global Political Islam*, 337.

[223] Olivier Roy, *Globalized Islam: The Search for a New Ummah* (New York: Columbia University Press, 2004), 1. Olivier Roy, *The Failure of Political Islam* (Cambridge, MA: Harvard University Press, 1994), 194, 202.

[224] Roy, *Globalized Islam: The Search for a New Ummah*, 2.

Roy contends that "post-Islamism means privatization of re-Islamization."[225] In essence, this indicates a tendency to strive towards the establishment of Islamic society through individual effort and implies a separation of individual religious effort from government.   Prior to concluding that this implies a divorce between religion and government in Muslim societies, research must examine the context of secularism in the religion. The non-existence of a cohesive Islamist movement leads scholars to claim that political Islam has failed.

Olivier Roy and Gilles Kepel contend that Islamism has been abandoned and the world is witnessing "post-Islamism."[226] According to this theory, Islamic groups failed to achieve the objective of usurping political power and have "molded themselves into the framework of existing states."[227] If Islamists are integrating into political systems this indicates that an organized, liberal camp may exist counter to Roy's stateless, radical neofundamentalists.   Additionally, Kepel's claim that groups championing concepts parallel to Western ideals—such as human rights and freedom of expression—are abandoning Islam fails to consider the role of these ethics in the religion.[228] Further research, based on a broad concept of political Islam versus a discrete set of norms, must determine if common ground exists between this type of political thought and more liberal government.

2.   The Failure of Post-Islamism

Mandaville argues against Roy's presentation of post-Islamism since Islamist movements have historically lacked coherency and, therefore, cannot produce a logical follow-on movement.[229] Instead, he characterizes "new Islamists" as those that embrace "pragmatism and policy rather than public virtue" as the impetus behind their actions.[230]

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[225] Roy, *Globalized Islam: The Search for a New Ummah*, 97. Mandaville, *Global Political Islam,* 343.

[226] Mandaville, 343.

[227] Roy, *The Failure of Political Islam*, 194. Mandaville, 343.

[228] Mandaville, 346.

[229] Ibid., 345.

[230] Ibid., 334.

Instead of concluding that moderate Islamist positions equate to the deterioration of Islam in politics, he outlines the potential that Islam is capable of evolving in its political role.

Political Islam does not conform to a single ideology since states vary in the methods in which they incorporate Islam into "government, domestic programs, and foreign policies."[231] Iran and Sudan provide examples of radical Islamic states that have become characterizations of political Islam. By labeling these regimes as terrorist organizations, the United States potentially implies that political Islam is limited to radical groups.[232] Egypt has been a more moderate nation by tolerating Islamic influence and creating "a more centrist social and political activism; normalized and institutionalized."[233] Despite these apparent differences between Islamist approaches to politics, debate continues over whether a spectrum exists in political Islam or if there is no difference between radical and moderate Islamists.[234]

In "Political Islam and the West: A New Cold War or Convergence?" Michael Salla describes perspectives on political Islam with more detail. He explains that political scientists such as Bernard Lewis and Samuel Huntington are essentialists "who use a limited number of conceptual categories and apply these universally in their analysis of political Islam.[235] Counter to this limited characterization of groups, the contingencist camp—which includes scholars such as John Esposito—views political Islam as a less rigid framework that includes a "diversity of Islamic actors and movements" that cannot be adequately addressed with "predetermined presumptions and reactions."[236] Salla

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[231] Esposito, *Political Islam: Revolution, Radicalism, or Reform?*, 3.

[232] Esposito, 7.

[233] Ibid., 9.

[234] Hosni Mubarak did not delineate between radical and moderate Islamists. Ibid., 1,9. John L. Esposito, "Its' the Policy Stupid: Political Islam and U.S. Foreign Policy," *Harvard International Review*, May 2, 2007, http://hir.harvard.edu/its-the-policy-stupid (accessed Nov 28 , 2011).

[235] Michael E. Salla, "Political Islam and the West: A New Cold War or Convergence?" *Third World Quarterly*, Vol. 18, No. 4 (Sep 1997), 730. According to Salla, essentialists argue that the West must support "all Muslim governments that are 'forced' to repress Islamic movements militarily" based on a concept similar to containment. Ibid, 734.

[236] John L. Esposito, *The Islamic Threat: Myth or Reality?* (New York: Oxford University Press, 1992), 169. Contingencists describe U.S. support for Muslim governments' obstruction of opposition movements as counter to any attempt to increase the legitimacy of democracy as "a viable mechanism for political and social change." Ibid, 189.

presents a third perspective that he coins as the convergence thesis. He suggests that essentialist and contingencist views are rendered less useful by their "methodological approaches" and that scholars must treat political Islam as a "paradigm that is in direct competition with liberal democracy in terms of the universal appeal and scope of their respective norms."[237] Although the norms of these two systems may in fact clash, research must examine if commensalism exists between political Islam and liberal democracy at the meta-ethical level in order to properly categorize the former.

3. Political Islam as a Meta-Ethic

Based on the current literature, political Islam cannot be limited to either radical or liberal groups. Therefore, scholars and policymakers cannot treat its political ideology as a discrete value and it should not be categorized as authoritarian, nomocratic, or democratic by default. This thesis considers political Islam an environment of theory whose "core concerns are temporal and political" and relies on "the Qur'an, the *hadiths* (reports about the words and deeds of Muhammad and his companions), and other canonical texts to justify [any] stances and actions."[238] Political Islam's nature is as widely ranging as the topics it addresses and should not be tied to any other political or social system. Rather, it is a perspective that varies with the way in which one interprets the religious texts and is not bound by modern political constraints but only one's ability to comprehend Islamic guidance and the core values it prescribes.

C. ISLAM AND THE STATE

Current rhetoric from radical groups often calls for the establishment of an Islamic state and/or a resurrection of the caliphate. Despite their effect on the media, such initiatives do not possess very strong support in the form of historical precedents. Ultimately, the more extreme political Islam becomes in its quest for an Islamic state, the less legitimate it becomes.

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[237] Salla, "Political Islam and the West: A New Cold War or Convergence?", 737.

[238] Joel Beinin and Joe Stork, "On the Modernity, Historical Specificity, and International Context of Political Islam," in Joel Beinin and Joe Stork, eds., *Political Islam: Essays from Middle East Report* (Berkeley, CA: University of California Press, 1997), 3.

There is wide consensus that Islam, based on the Qur'an and other religious documents, provides very little guidance on politics and government.[239] Nazih Ayubi explains that the religious texts do not address how to "form states, run governments, and manage organization" in significant detail.[240] Ray Takeyh and Nikolas Gvosdev, when addressing radical Islam, opine that it "cannot provide a working, alternate model for organizing society."[241] Therefore, the fact that the Qur'an does not provide guidance on state building indicates that the idea of an Islamic state may be chimera. Current literature complements this thesis's notion of political Islam while deconstructing the concept of an Islamic state.

The prevailing argument for an Islamic state does not incorporate the structures necessary to support the government and does not accurately interpret history. The lack of guidance on creating institutions in Islamic religious texts undermines the concept of establishing "utopian Islam".[242] Scholars cite Egypt's Islamic Jihad and Islamic Group as examples of political Islam movements that did not provide solutions in governance and only sought to gain state power; their failure was rooted in the inability to establish effective institutions to improve socio-economic conditions.[243] One potential explanation for this failure of ideology is the historical misunderstanding of the origins of government in the Arab world.

The caliphate ruled authoritarian states that were not subservient to Islamic practices. According to Ayubi, politics were a product "of the economic requirements and cultural traditions of the territories that eventually formed the Islamic dominion."[244] The central role of the state in economics led to authoritarian rule that relied on military

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[239] Mandaville, *Global Political Islam*, 12. Ayubi, *Political Islam: Religion and Politics in the Arab World*, 1. Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford, UK: Oxford University Press, 2001), 54. Takeyh and Gvosdev, *The Receding Shadow of the Prophet: The Rise and Fall of Radical Political Islam*, xiv.

[240] Ayubi, 4.

[241] According to Takeyh and Gvosdev, radical Islam's inability to govern makes it best suited as an opposition party. Takeyh and Gvosdev, 165.

[242] Ibid., xi.

[243] Ibid., 67.

[244] Ayubi, 30.

and physical power legitimized by Islam.[245] As a result, the states of the caliphate were not Islamic states; rather, the caliphates were empires that co-opted Islam in order to achieve "ideological hegemony."[246]

According to Ayubi, "The juristic theory of the Islamic state… flourished particularly when the caliphate as an historical and political reality was weakening and withering. This theory was therefore obsessed with an attempt at rescuing the community from its unhappy destiny by overemphasizing its presumed religious character."[247] He goes on to expound that "the theory of the 'Islamic state' is little more than elaborate *fiqh* (Islamic legal theory) presented as though it were pure *shari'a*."[248]

The lack of guidance for an Islamic state in the Qur'an and other Islamic texts weakens the camp in political Islam that believes a return to the Golden Age is required for Islam to succeed in government.[249] More importantly, if literature and rhetoric divorces political Islam from the discrete objective of establishing a utopian Islamic state that may not be achievable, populations can view political Islam through a broader lens and it can act as a conduit for creating more peaceful societies. If this is the case then any efforts to stifle political Islam ultimately decreases the United States' homeland security.

D.   ISLAM, SECULARISM, AND DEMOCRACY

Many volumes discuss the relationship between Islam and democracy in great detail.[250] This chapter briefly examines the topics of secularism and democracy in Islam

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245 Ayubi, *Political Islam: Religion and Politics in the Arab World*, 32. Sachedina, *The Islamic Roots of Democratic Pluralism*, 79. Gudrun Krämer, "Islamist Notions of Democracy," in Joel Beinin and Joe Stork, eds., *Political Islam: Essays from Middle East Report* (Berkeley, CA: University of California Press, 1997), 73.

246 Ayubi, 4. The state's co-opting of *fatwa* (juristic opinion) has skewed its purpose from facilitating the "free flow of thought and expression" to being an "instrument of restriction on freedom of expression in religious matters." Kalami, *Shari'ah Law: An Introduction*, 175.

247 Ayubi, 17.

248 Ibid.

249 Based on the previous discussion, the Golden Age equates to authoritarian rule by politicians that use religion as a coercive tool rather than a check or balance.

250 See Beinin and Stork, *Political Islam: Essays from Middle East Report*; Sachedina, *The Islamic Roots of Democratic Pluralism*, Mandaville, *Global Political Islam*; and Ayubi, *Political Islam: Religion and Politics in the Arab World*.

to show that these two practices are not anathema to political Islam. This illustrates a potential role for political Islam in Muslim and international society as an impetus for the establishment of democratic government without sacrificing religious beliefs and could contribute to a more secure America.

According to Gudrun Krämer, Islamic belief does not constrain the method of governance as long as it does not violate Islamic values.[251] This, coupled with an inherent flexibility in the *shari'a*, supports the broad scope of political Islam across widely varying governments. The *shari'a* allows a role for the "elements (*al-mutaghayyir*) derived by human reason from [the immutable core or *al-thabit*], following the rules of Islamic jurisprudence (*ijtihad*)."[252] Therefore, although law must originate from God, Islam does not prohibit the function of man's reason when interpreting certain jurisprudence.[253] This leads to a bifurcated structure of Islamic legal theory.

Islamic legal theory incorporates a structure akin to secularism by distinguishing between the person-creator relationship (*'ibadat*) and economic, political, and familial relationships (*mu'amalat*).[254] By separating these two realms, Islam allows a role for reason in the subject of politics while individualizing religion. According to Abdulaziz Sachedina, "Islamic tradition recognizes a de facto separation between the religious and temporal realms of human activity."[255] Additionally, Islamic literature has also segregated politics from religion. Nizam al-Mulk authored *Siyasatnama* ("Book of Politics") in which the Muslim world categorized politics as its own discipline.[256] While these revelations do not prescribe secularism to Islamic governance, they illustrate that

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[251] Krämer, "Islamist Notions of Democracy," 75.

[252] Ibid., 74.

[253] According to Mohammad Hashim Kamali, "The leading jurists and *'ulama* have consistently maintained the view that Shari'a is resourceful and well-equipped with the necessary tools with which to accommodate social change." Kamali, *Shari'ah Law: An Introduction*, 49, 54.

[254] Krämer, 73. Kamali, 50-52.

[255] Sachedina, *The Islamic Roots of Democratic Pluralism*, 5.

[256] Mandaville, *Global Political Islam*, 38.

this structure of government does not clash with Islamic beliefs.[257] The same is true with regards to democratic participation.

Earliest Islam supported the concept of democracy. One of the Prophet's charges was the "appeal to give counsel (*al-din al-nasiha*)."[258] This concept encourages democratic involvement and goes so far as to make political participation through consultation (*shura*) a religious duty (*farida*).[259] Kramer equates the *shura* as the "equivalent of western parliamentary rule [and] the basis of an authentic Islamic democracy."[260] Islam's tenets of *shura* and *'ijma* (general consensus) are two illustrations of the close relation between the religious practice and democracy.

According to Sachedina, "In Islam, political and religious practices are distinct aspects of an historical dialectic whose aim is the establishment of a global community under God."[261] The consensus in moderate political Islam is that people are born equal, the government's purpose is to enforce Islamic values, God is the only sovereign, the "source of all powers" to apply God's law is the community, and the leader is the representative of the community.[262] Based on this description, along with knowledge of Islam's embrace of secularism and democracy, there is little reason for moderate political Islamists to be limited in political participation based on the fear that they do not support liberal principles.

E.   CONTEMPORARY POLITICAL ISLAM

In general, the U.S. perspective towards political Islam was apathetic prior to 2001 and has become negative in the aftermath of 9/11.[263] According to Gerges, there has been no clear policy toward it because political Islam is not considered a threat; the

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[257] According to Kalami, "Taking a totally secular approach… is not advisable in the Islamic context. We believe that human rights and democratic values would benefit if religious values are also taken into consideration." Kalami, *Shari'ah Law: An Introduction*, 206.

[258] Krämer, "Islamist Notions of Democracy," 75.

[259] Ibid., 75. Kalami, 101.

[260] Krämer, 8.

[261] Sachedina, *The Islamic Roots of Democratic Pluralism*, 6.

[262] Krämer, 75. Kalami, 60, 62, 201, 203, 205.

[263] Gerges, *America and Political Islam: Clash of Cultures or Clash of Interests?*, 230.

U.S. position attempts to show respect for the religion and a rejection of extremism.[264] The United States has avoided enraging those representing political Islam, does not provide support for Islamist groups that oppose an ally, and has subscribed to the belief that political Islam is not conducive to democracy.[265]

The U.S.'s myopic perspective that discredits political Islam as an engine for democratic reform in the Middle East and the its tendency to let short term interests "prevail over its commitment to liberal and democratic values" may have stifled reform in Muslim states and reduced homeland security.[266] United States support for radical Islamic groups in Afghanistan during the 1980s helped these groups develop the capabilities showcased by militant groups at the turn of the century. A less extreme example of United States short term interests overwhelming democratic ideology is the nation's support for the hardline Islamic regimes of Saudi Arabia and Pakistan—neither of which are beacons of human rights or freedom of expression.[267] The United States' maintenance of the status quo in authoritarian regimes acts as a stifling force against democratic reform.

1.   Moderate Political Islam in Egypt

Many Islamist groups in the 1980s and 1990s adopted a new political worldview when they gave up their militant stances and adopted an agenda of political action.[268] Egypt was one region of moderate political Islam where groups disavowed violence in the mid to late 1990s.[269] The country's "moderates believe that peaceful means and acceptance of democratic principles are more likely to lead to greater Islamist influence in Egypt."[270] Hosni Mubarak was conciliatory towards the Islamists in some cases as

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[264] Gerges, *America and Political Islam: Clash of Cultures or Clash of Interests?*, 17, 229, 238.

[265] Ibid., 3.

[266] Ibid., 189.

[267] Beinin and Stork, "On the Modernity, Historical Specificity, and International Context of Political Islam," 11.

[268] Roy, *Globalized Islam: The Search for a New Ummah*, 58.

[269] Takeyh and Gvosdev, *The Receding Shadow of the Prophet: The Rise and Fall of Radical Political Islam*, 73.

[270] Ibid., 69.

was evidenced by him allowing Islam in law, education, and media. According to Takeyh and Gvosdev, he used a strategy of placating the Muslim Brotherhood without recognizing the group's legitimacy (it remained illegal) or advocating their cause.[271] This relationship worked well for the dictator; by allowing Islamists limited participation in a democracy that was strictly regulated by the regime, Mubarak was able to control the Islamists.[272]

The rise of moderate political Islamists in Egypt provided the United States a potential source for domestic reform. As discussed in previous chapters, the liberalization of Egypt could provide economic benefits to America and democratization might promote a more stable peace. The Clinton Administration established contacts with the Muslim Brotherhood in the 1990s when it recognized the group's viability as a "non-violent Islamist alternative in Egypt."[273] Ultimately, the U.S. hedged the power of the regime by deciding to reverse this course of action and reinforce support for Mubarak's status quo (after he protested against the relations with the Muslim Brotherhood). Mubarak's power to court Washington rested on the stability his rule provided for American interests overseas and the continuation of the Israeli-Arab peace.[274] However, by supporting the regime the United States elected to neglect potential forces of democratic reform and increased Mubarak's power to repress these opposition groups.[275] Mubarak's perspective on Islamists did not include recognition of a difference between moderate and extremist groups and treated them with the same coercive means. This prevented the rise of any effective, moderate political Islamists focused on enacting democratic reform.[276]

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[271] Takeyh and Gvosdev, *The Receding Shadow of the Prophet: The Rise and Fall of Radical Political Islam*, 70.

[272] Mandaville, *Global Political Islam*, 347.

[273] Gerges, *America and Political Islam: Clash of Cultures or Clash of Interests?*, 177.

[274] Ibid., 231.

[275] The regime's crackdowns against the Muslim Brotherhood in 1995 and 2000 are examples of this repressive force. See Chapter II.

[276] Gerges, 173.

When U.S. foreign policy supports autocratic regimes such as Mubarak's, it indirectly aids the government's ability to repress opposition. This retards reform efforts and delegitimizes the U.S. democratic message.[277] Research indicates that pragmatic political Islamists that embrace pluralism, political participation, government accountability, and human rights have become mainstream in the 21st century.[278] According to Mandaville, contemporary Islamists are more progressive than the Arab regimes.[279] U.S. policy supporting these regimes has helped close avenues of opposition for moderate political Islamists, stood in the way of democratic reform, and missed opportunities to foster legitimate opposition that would "expose the falsity of the militants' raison d'être."[280] In the worst instances, U.S. complicity in a regime denying a role for moderate political Islam in government could lead some groups to resort to the methods of radical Islam.

F.   U.S. POLICY AND RADICALIZATION THEORY

U.S. policy may involve personal and political ramifications that researchers have cited as engines for radicalization. The Arab world's perception that the United States enacts anti-Muslim policies that violate human rights and operate outside the rule of law reduces the legitimacy of the U.S. democratic message. Perhaps more importantly, United States support for repressive regimes affects a larger population than personalized actions (such as extraordinary rendition) and may hasten radicalization in the most dramatic fashion.

Professors Clark McCauley and Sophia Moskalenko define radicalization as "a change in beliefs, feelings, and behaviors in directions that increasingly justify intergroup

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[277] According to a Gallup poll, "Majorities in every nation… do not believe that the United States was serious about the establishment of democratic systems in the [Arab] region." Esposito, "It's the Policy Stupid: Political Islam and U.S. Foreign Policy."

[278] Krämer, "Islamist Notions of Democracy," 80. For example, Turkey's current AKP has no official commitment to religion. In Egypt, Wasat is a purely political party that was birthed from the Muslim Brotherhood. Roy, *Globalized Islam: The Search for a New Ummah*, 74-75. Kamali, *Shari'ah Law: An IntroductionaI*, 210.

[279] Mandaville, *Global Political Islam*, 343.

[280] Gerges, *America and Political Islam: Clash of Cultures or Clash of Interests?*, 232. Kamali, 212.

violence and demand sacrifice in defense of the ingroup."[281] Visually depicted, they present radicalization as a pyramid whose broad base represents the majority of a community that has shared beliefs but is not willing to use extreme measures to defend them. As one moves up in the pyramid, the groups' numbers diminish as radicalization increases and eventually includes more extreme measures such as terrorism.[282] The gradient of the pyramid represents the volatility of the majority in relation to stimuli. In order to complement McCauley and Moskalenko's examination of the means by which individuals move up the pyramid, the specific inputs affecting that migration requires further scrutiny.

Mechanisms of Radicalization

The U.S. policy of extraordinary rendition and its support for the Mubarak regime are classic agents of radicalization in Egypt. McCauley and Moskalenko identify twelve mechanisms that beget radicalization, ten of which are reactionary in nature.[283] Extraordinary rendition plays a role in the "Individual Radicalization by Personal Victimization" and may move individuals higher in the pyramid.[284] In *Ghost Plane*, Stephen Grey quotes Federal Bureau of Investigation (FBI) agent Jack Cloonan as saying, "What we don't seem to figure out is that when [Muslims] are abused, they are duty bound to get revenge."[285] Violations of human rights via kidnapping or torture equate to humiliation and may precipitate revenge in Arab societies.[286]

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[281] Clark McCauley and Sophia Moskalenko, "Mechanisms of Political Radicalization: Pathways Toward Terrorism," *Terrorism and Political Violence*, Vol. 20, No. 3 (2008), 416.

[282] Ibid., 417.

[283] Ibid., 430.

[284] Ibid., 418.

[285] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program* (New York: St. Martin's Griffin, 2006), 43.

[286] Lawrence Wright, "The Man Behind Bin Laden: How an Egyptian doctor became a master of terror," *The New Yorker*, September 16, 2002, http://www.newyorker.com/archive/2002/09/16/020916fa_fact2 (accessed Sep 12, 2011).

Stephen Wright quotes Ayman al-Zawahiri during his trial for the assassination of Anwar Sadat (and after allegedly being victimized by torture), "So where is democracy? Where is freedom? Where is [*sic*] human rights? Where is justice? Where is justice? We will never forget! We will never forget!"[287]

In addition to victimization, McCauley and Moskalenko describe "Individual Radicalization by Political Grievance" as another reaction to external stimulus.[288] Autocratic society manifests such grievances since no political options exist for individuals. America's complicity in preventing the existence opposition groups by supporting the regimes that repress them runs counter to its democratic message. According to Maha Azzam, "It appears the main triggers of radicalization lie on the political level."[289] Political injustices affect a larger number of the populace and "shared grievances galvanize jihadis into more direct violent action against Western interests" based on the West's support for autocratic regimes.[290]

Those seeking to increase the gradient of the radicalization pyramid by widening the top can use "Jujitsu Politics," defined as "using the enemy's strength against him," in order to augment support.[291] McCauley and Moskalenko point out that "some terrorists have explicitly sought to elicit a state response that will carry far beyond the terrorist sympathizers who have not yet been mobilized."[292] Extraordinary rendition equates to a state response that could carry far beyond the current community of terrorists, invoking an outcome similar to the Jenin Paradox, and result in further radicalization.[293]

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[287] Wright, "The Man Behind Bin Laden: How an Egyptian doctor became a master of terror," 22.

[288] McCauley and Moskalenko, "Mechanisms of Political Radicalization: Pathways Toward Terrorism," 419.

[289] Maha Azzam, "The Radicalization of Muslim Communities in Europe: Local and Global Dimensions," *The Brown Journal of World Affairs*, Vol. 13, No. 2 (Spring 2007), 9.

[290] Ibid., 9.

[291] McCauley and Moskalenko, 426.

[292] Ibid.

[293] Chapter III discusses the Jenin Paradox where the victimization of a member of a group results in the group's membership expanding (at an accelerated rate) rather than contracting. Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 246.

2. Themes of Islamic Radicalization

Historical examples support McCauley and Moskalenko's research, including the radicalization of Sayyid Qutb who became the "leading ideologue of the Muslim Brethern" and the radical Islamic movement in Egypt.[294] Two elements of Qutb's radicalization stand out in particular. First, he authored his "manifesto for Islamicists" while interred, and reportedly tortured (radicalization by victimization), in Cairo's Al Torah prison. This prison has also held victims of extraordinary rendition.[295] Secondly, it was Qutb's disillusion with the West, and his belief that it lacked the values he thought it championed, which initially drove him toward extremism.[296] This latter, and arguably more important, contributor is an example of radicalization by political grievance since he believed Western influence put humanity "on the brink of the abyss."[297] Sixty years later, extraordinary rendition may provide fuel for radicalization efforts similar to Qutb's based on its deviation from the democratic ideals preached by the United States.

The U.S. policy of extraordinary rendition does the most damage when it is coupled with U.S. support for authoritarian regimes. A recurring theme in Muslim extremism is the fact that the majority believes that "Western foreign policy has been anti-Muslim," especially in its support for repressive governments.[298] U.S. support for Mubarak's regime included providing equipment and training that could be used as coercive tools to repress opposition and the financial support necessary for him to maintain power.[299] The policy of extraordinary rendition had an added benefit of delivering opposition members to the regime. As CIA officer Michael Scheuer points out

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[294] Gilles Kepel, *Muslim Extremism in Egypt: The Prophet and Pharaoh* (Berkeley, CA: University of California Press, 1984), 42.

[295] Grey, *Ghost Plane: The True Story of The CIA Rendition and Torture Program*, 261, 246.

[296] Kepel, 43.

[297] Ibid. It is important that research recognizes Qutb's ideology, more than his personal suffering, plays the prominent role in Islamic extremist thought today, supporting the fact that political grievances are extremely potent sources of radicalization.

[298] Azzam, "The Radicalization of Muslim Communities in Europe: Local and Global Dimensions," 123, 130. Michael Scheuer, *Imperial Hubris: Why the West is Losing the War on Terror* (Washington, DC: Brassey's, Inc., 2004), xviii.. Kenneth M. Pollack, *A Path Out of the Desert* (New York: Random House, 2008), 199.

[299] Pollack, 200.

in Jane Mayer's *The Dark Side*, "It served American purposes to get these people arrested, and Egyptian purposes to get these people back."[300] When policies such as rendition transcend from acts of personal victimization to political grievances their negative effects are increased and, therefore, alter the shape of the radicalization pyramid.

Increased radicalization threatens America's security by rallying support for the groups seeking to delegitimize the U.S. democratic message and alienate the United States from a strategically important region. Pollack describes the ploys of Arab autocrats, such as Mubarak, that promoted anti-U.S. messages in order to co-opt opposition followers and increase their own legitimacy.[301] Mubarak went so far as to actively seek support from theological leaders, such as the ulamah of al-Azham University, in order to cater to Islamic opposition sympathizers.[302] In addition to supporting the Islamic message with anti-American rhetoric, the autocratic regime's repressive nature increased the strength of political Islam.

3.   Authoritarianism and Radicalization

According to Pollack, authoritarian regimes help Islamists by eliminating secular opposition in order to ensure self-preservation.[303] On the other hand, "although they certainly employed [similar] tactics against the Islamists as well… [they] also demonstrated a certain degree of restraint" against those groups in order to avoid earning an anti-religious stigma.[304] As a result, individuals seeking political alternatives to the regime were left only with the Islamist option.[305]

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[300] Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008), 113. According to Human Rights Watch, 63 renditions to Egypt took place between 1994 and 2004. 58 of those rendered to Egypt were Egyptian nationals. Human Rights Watch, "Black Hole: The Fate of Islamists Rendered to Egypt," May 10, 2005, E1705, http://www.unhcr.org/refworld/docid/42c3bd01d.html (accessed Sep 13, 2011).

[301] Pollack, *A Path Out of the Desert*, 201.

[302] Ibid, 128.

[303] Ibid., 127.

[304] Ibid.,128.

[305] Ibid., 129.

Increasing radical Islam's strength may lead to a higher threat of extremist actions against the United States and the failure of democracy in the Middle East. According to McCauley and Moskalenko's theory of "Group Radicalization in Like-Minded Groups" the migration of citizens to political Islam could result in a shift "toward increased extremity on whichever side is favored by most individuals."[306] In the worst case, if the Islamist group favors violent action against the United States then new members are likely to adopt the same stance. If the group does not resort to terrorism, the rise of radical political Islam could result in the emergence of an undemocratic, anti-U.S. government such as Iran's theocracy.[307] While radical political Islam may provide a foundation for radicalization, early discussions in this chapter have showed that the religious pretext of Islam favors moderate government and democracy over the minority radical movement.

G. CONCLUSION

Literature describes the role of political Islam in Arab democratic reform better by presenting it as an overarching core of beliefs that provides architecture for varying styles of governance. The moderate camp of political Islam represents an engine for reform that encompasses assertions of the rights of individuals based on the *Qur'an*. U.S. policy should not support regimes that repress these groups if it desires democratic reform in the Middle East. Denying moderate political Islamists access to democratic institutions is "a root case of violence and protest within Arab societies."[308]

The research has illustrated U.S. policy's role in radicalization. U.S. support for undemocratic regimes contributes to the Islamist belief that the only recourse is extremism. Policies such as extraordinary rendition focus on the fringe elements of political Islam and simultaneously undermine the U.S. democratic message. As a result, U.S. policy acts as an engine for radicalization.

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[306] McCauley and Moskalenko, "Mechanisms of Political Radicalization: Pathways Toward Terrorism," 422.

[307] Pollack, *A Path Out of the Desert*, 131.

[308] Kamali, *Shari'ah: An Introduction*, 208.

McCauley and Moskalenko attribute radicalization to a "syndrome of beliefs" that includes a perception of injustice, distrust, and feelings of vulnerability.[309] If U.S. policy nurtures these reactions then it is running counter to the U.S. message. Therefore, U.S. policymakers should re-examine the policy of rendition and the definition of torture with this syndrome of beliefs in mind.

From the U.S. policymaker's perspective, the entrance of moderate political Islamists into international relations requires a paradigm shift. Instead of focusing on short-term gains associated with the status quo, the United States must refocus on enabling long-term, sustainable stability. Recognition of Islam's ability to play a role in Middle Eastern reform and support for groups that promote human rights and democracy (or ending support for regimes that oppose them) delegitimizes the cause of militant groups and increases U.S. homeland security.

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[309] McCauley and Moskalenko, "Mechanisms of Political Radicalization: Pathways Toward Terrorism," 416.

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V. RE-EXAMINING U.S. FOREIGN POLICY

A. RESEARCH CONCLUSIONS

The research in this thesis has illustrated that U.S. foreign policy in Egypt during Hosni Mubarak's regime failed to foster any meaningful advance toward democracy. U.S. foreign aid, in the form of economic aid and military funding, bolstered the authoritarian regime. Extraordinary rendition furthered the regime's strength and compromised the integrity of the United States by jeopardizing its adherence to the rule of law and respect for human rights. The continuing democratic deficit in Egypt, coupled with policies that do not support the U.S. cause of freedom and human rights, has delegitimized America's democratic message, quelled meaningful reform, and ostracized political Islam. In addition to increasing the threat of terrorism from radicalized Islamist groups, the actions of the past 30 years have culminated in uncertainty over the future trajectory of Egypt.

Researchers must be cautious when sifting through this history in order to determine meaningful lessons. U.S. foreign aid and extraordinary rendition are only two elements of foreign policy and this research has limited its scope to Egypt and the negative aspects of these U.S. policies. Additional research must address the positive outcomes of U.S. foreign policy in Egypt and the other avenues of diplomacy that impact national security. Despite the narrow scope of the present examination, the research provides support for macro-level conclusions.

1. Short Versus Long-Term Policy

The cases in this thesis illustrate a choice between short and long term benefits in foreign policy. Short-term benefits, although they may actually persevere over a significant amount of time (for example, Mubarak's 30 year rule), lack true stability that is backed by institutions and the rule of law. U.S. support for Mubarak created short-term benefits: regime stability, access to the Suez Canal and Egyptian airspace, and peace with Israel.

The Egyptian's ouster of Mubarak has put those benefits at risk. Furthermore, U.S. policy up to the revolution has put the nation in a position opposing those seeking to create a more democratic Egypt.

In order to avoid similar outcomes in the future, U.S. foreign policy must attempt to produce long-term benefits. In the case of Egypt, U.S. support for the development of democratic institutions and law, instead of backing dictators or military leaders, will foster a system that governs itself and behaves as an actor that the United States can interact with, regardless of who holds positions of leadership. Interestingly enough, in order to change the foreign policy paradigm, the United States should start by re-examining its own methods of domestic governance.

B.   RE-EXAMINING U.S. GOVERNMENT

All three branches of the U.S. government must play an active role in foreign policy. Contemporary practice sees the executive as the main actor overseas; however, Congress must have a greater role in crafting foreign policy. Additionally, the judicial branch plays a critical role in ensuring that policies adhere to the rule of law.[310] Adherence to this U.S. model of democracy is critical to ensuring the legitimacy of America's democratic message.

1.   The Executive and Judiciary

The events leading up to and following World War II gave rise to the establishment of the national security state.[311] According to Thomas Mann and Norman Ornstein, this resulted in the demotion of Congress to the executive's subordinate in

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[310] According to Alexander Hamilton, the judiciary authority extends to cases concerning "the intercourse between the United States and foreign nations." Alexander Hamilton, "Federalist No. 80," *Independent Journal*, June 21, 1788, http://www.constitution.org/fed/federa80.htm (accessed Nov 30, 2011).

[311] Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track* (New York: Oxford University Press, 2008), 40, 44. Cecil V. Crabb, Jr., Glenn J. Antizzo, Leila E. Sarieddine, *Congress and the Foreign Policy Process: Modes of Legislative Behavior* (Baton Rouge, LA: Louisiana State University Press, 2000), 39. Douglas T. Stuart, *Creating the National Security State: A History of the Law That Transformed America* (Princeton, NJ: Princeton University Press, 2008), 109-143, 279.

foreign policy.[312] The Honorable Lee H. Hamilton, a former representative in the House of Representatives, points out that the National Security Act of 1947 cemented the dominance of the executive by providing it vehicles for policy such as the National Security Council, Department of Defense, and Central Intelligence Agency. As a result, foreign policy took on a decidedly militaristic character.[313]

Recent foreign policy illustrates the faults with diplomacy that excludes the legislative and judicial branches. The policy of extraordinary rendition is governed by executive order and lacks meaningful legislative or judicial oversight. Lack of judicial branch oversight of the executive in this type of endeavor—supplanted by the Office of White House Counsel—undermines its duty to act as a check against foreign policy that may appear extralegal. Without such checks, the government compromises a fundamental premise of American democracy: "the distribution of… power among its constituent parts."[314]

According to James Madison, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands… may justly be pronounced the very definition of tyranny."[315] Currently, the executive's ability to declare policies necessary (under the auspices of the Constitution) based on his own office's legal interpretation undermines American democratic governance. Congress must balance the executive's power in foreign policy.

2.   Congress

Congress was the first department that crafted foreign policy in the United States. prior to the Constitution, the Continental Congress carried out this duty alone since no executive existed. The states' representatives successfully governed the territory,

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312 Mann and Ornstein, 44.

313 Lee H. Hamilton, "Relations Between the President and Congress in Wartime," in James A Thurber, ed., *Rivals for Power: Presidential-Congressional Relations* (Lanham, MD: Rowman and Littlefield Publishers, Inc., 2009), 290.

314 James Madison, "The Federalist No. 47," *New York Packet*, January 30, 1788, http://www.constitution.org/fed/federa47.htm (accessed Nov 18, 2011).

315 Ibid.

managed the Revolutionary War effort, created a relationship with France without capitulating to their influence, and ultimately established peace with Britain. Additionally, the creation of the State Department traces back to Congress's Committee of Secret Correspondence.[316] Therefore, Congress has a historical role in foreign policy that some contend makes it the preeminent branch of U.S. Government.[317]

The legislative branch should share foreign policy powers with the executive. The Constitution is vague on this point, stating that Congress has the authority to "regulate Commerce with foreign Nations… declare war… raise and support Armies… [and] provide and maintain a Navy" while it declares the executive is the commander in chief of the military, the office with "the Power, by and with the Consent of the Senate, to make Treaties," and responsible for receiving "Ambassadors and other public Ministers."[318] The Federalist Papers explain this ambiguity by declaring consensus on the fact that, while departments must not be given a monopoly over any policy, the Constitution must take care not to make any department subservient to another in any shared capacity.[319] If the executive deliberately denies the legislative branch a role in foreign policy then it is acting counter to the Constitution.

There are many variables that can affect how a more prominent role for Congress would alter the character of U.S. foreign policy. Would Congress have supported dictators for access to markets and resources? Would it have prioritized gathering intelligence over guaranteeing human rights? While thought provoking, such counterfactual arguments are not germane to the larger-scale impact of congressional involvement in foreign policy. The U.S. concept of democracy demands that Congress has an equal role in foreign policy. This sustains the institutional construct that the Constitution prescribed for crafting foreign policy and it helps to legitimize U.S. promotion of liberal democratic norms by involving the population's representatives in

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[316] Crabb, et. al., *Congress and the Foreign Policy Process: Modes of Legislative Behavior*, 15-22.

[317] Mann and Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track*, 37.

[318] U.S. Constitution, art. I, sec. 8; art. II, sec. 2.

[319] James Madison, "The Federalist No. 48," *New York Packet*, February 1, 1788, http://www.constitution.org/fed/federa48.htm (accessed Oct 13, 2011).

the foreign policy process. In addition, having meaningful and deliberate consultation may help to mitigate the negative externalities associated with some foreign policy.[320]

3. Current Events

Two recent developments illustrate the executive's continued dominance in the foreign policy arena. On September 29, 2011, the Senate Appropriations Committee on Foreign Aid passed a measure that advocated placing conditions on U.S. military aid to Egypt.[321] Despite the Senate measure, Secretary of State Hillary Clinton "rejected" the bill's requirement to make the aid conditional.[322] More than a month after Clinton's remarks, the measure is absent in Congress while protests demanding democratic progress occur in Egypt. Over nine months after Mubarak's resignation, an isolated military leadership that has failed to repeal emergency law and improve civil liberties continues to govern Egypt. The protests on November 18, 2011, included an integrated effort among "liberals, leftists, and Islamist parties" and were specifically targeted against a document the Egyptian government released that would provide military leaders with authority over elected officials, including parliament and the president.[323] Based on the Secretary of State's inability to accommodate meaningful debate with Congress over placing conditions on military aid to Egypt (despite the current Egyptian regime's failure to show indications of reform) it appears that the executive branch continues to monopolize foreign policy agendas that remain inconsonant with liberal democratic values.

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[320] Hamilton, "Relations Between the President and Congress in Wartime," 285.

[321] The conditions include requirements to hold "democratic elections and protecting freedoms of the press, expression, and association." Mary Beth Sheridan, "Egypt Warns U.S. on Attaching Conditions to Military Aid," *The Washington Post*, Sep 29, 2011, http://www.washingtonpost.com/world/national-security/egypt-warn (accessed Oct 23, 2011).

[322] "Egypt Warns U.S. Against Setting New Conditions on its Military Aid," *Al Arabiya*, September 30, 2011, http://www.alarabiya.net/articles/2011/09/30/169480.html (accessed Nov 17, 2011).

[323] The document "includes clauses that remove the military's budget from parliamentary oversight and allow the [Supreme Council of the Armed Forces] a final say on military related matters." It is important to note that the current Egyptian civilian leadership "have been approved by the SCAF and ultimately answer to the military." "Tens of Thousands Protest in Egypt: Rally Called by Both Islamist and Secular Groups Aimed at Pressing Military Rulers to Hand Power to Civilian Government," *Al Jazeera*, November 18, 2011, http://www.aljazeera.com/news/middleeast/2011/11/2011111881959573228.html (accessed Nov 18, 2011).

A second example of the executive's dominance in American foreign policy concerns the policy of extraordinary rendition. Despite President's Obama's 2007 declaration that, "To build a better, freer world, we must first behave in ways that reflect the decency and aspirations of the American people," he elected to continue the policy of extraordinary rendition after his inauguration in 2009.[324] The policy's perpetuation comes without any indication of increased congressional oversight or review by the judicial branch.[325]

If extraordinary rendition continues, Congress should have oversight on the policy. As representatives of the American aspirations that President Obama alluded to, Congress has a duty to ensure policy carried out reflects the values of U.S. citizens, complies with the rule of law (by included judicial review as required), and does not impinge on human rights. A secretive, solitary executive (or legislature) undermines U.S. democratic institutions by accumulating a monopoly on power and evading judicial review.[326]

American government's recommitment to the democratic values outlined in the Declaration of Independence and the Constitution may not produce a significant change in foreign policy. Congress, along with the President, may conclude that the ethical and security costs of supporting autocrats and carrying out questionable policies such as extraordinary rendition do not outweigh the benefits. Judicial review may come to the same conclusion as the Office of White House Counsel and people such as Dick Cheney that "argued that the President has inherent powers under the Constitution that give him

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[324] David Johnston, "U.S. Says Rendition to Continue, But With More Oversight," *The New York Times*, August 25, 2009, http://www.nytimes.com/2009/08/25/us/politics/25rendition.html (accessed Nov 17, 2011).

[325] The Obama Administration's pledge to increase oversight refers to a greater role for the State Department in ensuring that prisoners are not tortured. This keeps the control and oversight of the policy within the executive branch. Ibid.

[326] According to Mann and Ornstein, Congress is complicit in the executive's accumulation of power due to its inability to overcome its own struggles with party politics. Mann and Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track*, 279.

The Supreme Court has not publicly addressed the legality of extraordinary rendition but it recently heard the case of five men that were subject to the policy. The cases were dismissed based on national security concerns. Carol J. Williams, "Five Foreign Men Lose 'Extraordinary Rendition' Case," *Los Angeles Times*, May 17, 2011, http://articles.latimes.com/2011/may/17/local/la-me-rendition-20110517 (accessed Nov 17, 2011).

power to act on his own in foreign affairs."[327] Regardless, research indicates that modern foreign policy's failure to legitimately promote democracy and human rights is paralleled by the U.S. government's migration away from the concept of a trifurcated democratic system that distributes power among the parts.

C.   RE-EXAMINING THE INTERNATIONAL ARENA

1.   Evolving Foreign Policy

Another macro-level lesson from U.S. foreign policy in Egypt is the U.S. failure to evolve with the international environment. Two transformational developments occurred with the end of the Cold War in 1991 and the ouster of Mubarak in 2011. Despite the former catapulting America to the position of the world's lone superpower, the United States was unable to successfully foster democratic reform in Egypt. One contributor was the unchanging nature of U.S. foreign policy. The Cold War forced America to court Middle East countries such as Egypt and Israel in order to counter the Soviet advance. The disappearance of the communist threat changed the nature of these relationships in favor of the United States. America's benefit from providing aid to these nations changed significantly after the collapse of the Soviet Union. The United States failed to use the leverage the new international conditions presented to effectively advance the proliferation of democracy, human rights, and the stability representative government brings in Egypt.

Further research may illustrate that the Gulf War in 1991 prevented any meaningful change in U.S. foreign policy in Egypt after the Cold War. This would complement the theory that the national security state increases the accumulation of executive power due to a strong security apparatus. The Iraqi threat that persevered through the turn of the century may have prevented Congress from taking a greater role in foreign policy. Additional examination should determine if the 1991 war with Iraq and the decade of conflict that followed removed Congress further from the role of crafting and overseeing foreign policy.

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[327] Mann and Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track*, 139.

Despite the failure to change policy after the Cold War, America has another opportunity to re-examine how it interacts with Egypt and other transitioning regimes.

Egypt's removal of Mubarak eliminates the source of short-term stability that U.S. policy catered to in the past 30 years. The President and Congress must transform foreign aid as the international environment changes. The Senate's plan for conditional aid is a necessary measure to exert U.S. leadership and accurately convey its foreign policy objectives. Congress should continue pursuing this policy in order to exercise the constitutional framework for foreign policy and promote the values of freedom and human rights abroad.

2.   Evolving Perspectives

The end of the Cold War removed communism from its role as an ideology that threatened democracy. The binary perspective of the bipolar international structure should not distort the post-Cold War world. The existence of radical Islamists may prompt the notion that their ideology is an enemy of democracy; however, the Arab Spring has delegitimized this marginalized subset of political Islam. An examination of moderate political Islam shows that it is not a competing ideology but rather a meta-ethic that shares many foundational principles of western democracy. The political world's classification of moderate political Islam as a system of beliefs upon which actors can create stable, democratic governments will result in sustainable systems that are propped up by institutions instead of men or the intervention of foreign powers. Further research on moderate political Islam movements such as Turkey's Justice and Development Party (AKP), Egypt's Center Party (*al-Wasat*), and Tunisia's Renaissance Party (*Ennahda*) should expand on these conclusions.

D.   CONCLUDING OBSERVATIONS: ROOT CAUSES AND SOLUTIONS

The failure of U.S. policy in Egypt traces to its exclusion of forces for reform and its role in repressing these forces through support for the Mubarak regime. However, the most crucial misstep of U.S. foreign policy was its delegitimization of the American democratic ideal. The United States can adjust its foreign policy to support long term stability by placing conditions on foreign aid that require democratic reform.

Additionally, the United States' recognition of political Islam's role in democratic reform will work in concert with the former to proliferate freedom, respect for human rights, delegitimize terrorist tactics used by radical Islamists, and increase homeland security. Perhaps the most critical impetus behind an evolved foreign policy is the operation of the U.S. government in crafting such strategy.

The United States' foreign policy must adhere to the rule of law if it is to maintain legitimacy. Violations of domestic or international law in response to terrorist attacks or based on economic interests may undermine the legitimacy of U.S. values and the nation's liberal democratic message. In order to adhere to the principles American rhetoric champions, the executive must remain subservient to the Constitution and utilize the legislative and judicial branches when considering national security measures.

The U.S. Constitution does not exclude the executive from the rule of law. This legal framework includes both domestic and international law since the Constitution specifically includes treaties—which equate to a form of international law—in its description of the supreme law of the land.[328] Therefore, both the limits set by congressional legislation (or executive order) and international treaties shape the legal space within which the executive must operate. Additionally, several U.S. court decisions support the applicability of customary international law as a part of federal law.[329] Therefore, the President cannot take any action desired based solely on his duty to carry out his constitutional responsibilities; the challenge is to take the most effective action within the domestic and international legal framework.

The executive must use both the judicial and legislative branches to craft foreign policy. The Department of Justice fulfills the role of ensuring security policy adheres to domestic and international law. Such decisions cannot rest solely with the Office of White House Counsel; they must take place outside the executive branch to ensure subjectivity. Mechanisms, such as the Foreign Intelligence Surveillance Act courts, exist to provide time critical decisions on the legality of surveillance in terrorism cases. A

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[328] U.S. Constitution, art. 6, cl. 2.

[329] See Christopher Linde, "The US. Constitution and International Law: Finding the Balance," *Journal of Transnational Law & Policy* Vol. 15, No. 2 (Spring 2006), 305-339.

similar process could provide expedited Department of Justice rulings on other security actions the executive is considering in order to ensure compliance with the rule of law. In this capacity, the judicial branch acts as a pre-emptive legal check against the executive's actions. Congress, on the other hand, provides the balance to foreign policy.

The executive and legislative branches share the responsibility for foreign policy.[330] Two of Congress's most visible roles in foreign policy are ratifying treaties and authorizing military action. The legislative branch's role in security decisions is to provide the executive an additional source of legal expertise and constitutional legitimacy (i.e. congressional approval of military action). Furthermore, legislative branch participation in security measures improves its function of executive oversight and may mitigate investigative efforts through inter-branch transparency. Ultimately, the President's consultation with Congress acts as a valuable tool for his own protection.

U.S. foreign policy has led to many positive outcomes in multiple regions. However, sometimes these policies have contradictory outcomes. Policymakers benefit from greater collaboration and expertise when attempting to avoid negative externalities of foreign policy such as radicalization, terrorism, and the delegitimization of democracy. The first step in preventing future detours from the democratic course in America's international agenda is to re-engage the constitutional framework that calls for coordinated foreign policy that includes all three branches of the U.S. federal government.

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[330] Harold Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (New Haven, CT: Yale University Press, 1990), 4.

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